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AIRLINE MERGERS AND ACQUISITIONS: THE QUESTION OF LABOR PROTECTION

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

MERGERS, ACQUISITIONS, AND OTHER FINANCIAL TRANSACTIONS IN THE AIRLINE INDUSTRY, AND THEIR EFFECT ON AIRLINE EMPLOYEES

NOVEMBER 21, 1985

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AIRLINE MERGERS AND ACQUISITIONS: THE QUESTION OF LABOR PROTECTION

THURSDAY, NOVEMBER 21, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in Room 253, Russell Senate Office Building, Hon. Nancy Kassebaum [chairman of the committee] presiding.

Staff members assigned to this hearing: Steve Johnson, staff counsel and Steve Palmer, minority professional staff member.

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. The hearing will please come to order.

The purpose of the hearing this morning is to examine mergers, acquisitions, and other financial transactions in the airline industry, and their effect on airline employees. While other aviation labor issues, such as first right of hire and flight and duty time regulations, continue to be of concern, it was felt that this relatively narrow focus would best allow for a thorough examination of the subject matter.

I would like to suggest some of the questions on which we would like to focus: One, is there a legislative history which would suggest that Congress intended the Civil Aeronautics Board to continue to condition financial transactions in the airline industry on the imposition of LPP's, even after the enactment of the Airline Deregulation Act of 1978?

Under what conditions would the Department of Transportation find it appropriate to condition an airline financial transaction on imposition of LPP's? Assuming LPP's are to be imposed on a transaction, who should be the principal beneficiary, the public at large, or affected airline employees? Last, what is the appropriate standard for LPP's, assuming they were to be imposed?

Senator Ford, do you have any opening comments?

OPENING STATEMENT BY SENATOR FORD

Senator FORD. I do, Madam Chairman, and I will take just a moment. But Madam Chairman, first I want to thank you for scheduling this hearing. I believe the timing is perfect, in that we have seen numerous mergers, acquisitions, and major business transactions in the airline industry in the last several months.

The airline industry now resembles the oil industry in the early 1980's, when all the drilling was done on Wall Street. I do not believe that these takeover attempts are over, and that is why I feel it is necessary to take a look at labor protective provisions for airline employees.

For many years, labor protective provisions were imposed by the CAB. The authority to administer labor protective provisions was transferred to the Department of Transportation in 1984. DOT has not found it necessary to impose labor protective provisions on any cases on which it has ruled.

I do not understand why DOT no longer feels that it is appropriate to impose labor protective standards, in that there is nothing in the Airline Deregulation Act that says that Congress wanted labor protective provisions eliminated. I am aware that the distinguished chairman of the subcommittee has on several occasions addressed the Senate on the intent of Congress on labor protective provisions.

Madam Chairman, DOT has not gotten the message yet. The deregulation environment as caused by the passage of the Act is not a reason to completely ignore labor in mergers, acquisitions, and major business transactions when ruled upon by the Department of Transportation.

I look forward to questioning the witnesses from the Department of Transportation on the Congressional intent of labor protective provisions.

Senator Hollings hopes to be here and he has an opening statement for the record.

Thank you, Madam Chairman.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

In the seven years since the airline industry was deregulated, a great deal of change has occurred. Airlines have come and gone. Service patterns have been altered due to the emergence and predominance of "hub and spoke" operations and the elimination of direct service to many cities.

There has also been an increasing trend toward consolidation of airlines into a handful of large and powerful carriers serving both domestic and international markets. The recent Muse-Southwest merger and the People Express-Frontier merger illustrate one aspect of this trend. Other carriers are purchasing smaller and less financially-stable airlines, whether it be the entire system or only a portion of their operations, as in the Pan Am-United Airlines Pacific route sale.

These mergers, acquisitions and consolidations between major air carriers can be completed only with the approval of the Secretary of Transportation. This review and approval process was mandated by Congress in section 408 of the Federal Aviation Act of 1958, which we reaffirmed last year as a part of the Civil Aeronautics Board Sunset Act, when the authority was transferred from the CAB to the Department of Transportation.

Prior to deregulation, the CAB regularly imposed certain labor protection provisions on airlines involved in mergers, acquisitions, or route transfers. Known as "Allegheny-Mohawk," these provisions are designed to protect airline employees through the integration of the seniority lists of the two carriers, as well as to provide limited compensation for displaced workers.

Since assuming its authority to rule on mergers, acquisitions, and consolidations, DOT has found it unnecessary to impose the Allegheny-Mohawk protections on any case before it. To many, including the airlines, this has been the proper application of section 408 in a deregulated environment. Others, most notably organized labor, strongly believe that these provisions are critical to airline industry employees. They argue that DOT must be made to act in a more responsive manner with respect to the increasing number of mergers and route maps and how they are adversely affecting employees.

This hearing, which has been requested by my good friend from Kentucky, Senator Ford, is designed to explore these issues. And I want to commend him and others on the subcommittee for agreeing to scheduling it.

We have no legislation before us today. But this remains an important and timely issue. And I look forward to hearing from today's witnesses.

Senator KASSEBAUM. Thank you.

Our first witness will be the Honorable Matt Scocozza, Assistant Secretary for Policy and International Affairs, Department of Transportation.

STATEMENT OF HON. MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. SCOCOZZA. Good morning, Madam Chairman, Senator Ford.

In the interest of time, I have a very brief statement and I will submit a longer statement for the record. I appreciate the opportunity to appear before your subcommittee today to discuss the Department of Transportation's views on the imposition of labor protective provisions. For the sake of brevity, I will paraphrase my written testimony that was submitted for the record.

The Civil Aeronautics Board established a policy of conditioning its approval of mergers and acquisitions on the acceptance of LPP's beginning in 1950. The Board later adopted standard LPP's. Standard LPP's provided for various employee benefits, including dismissal and displacement compensation to employees whose jobs were lost, downgraded, or transferred as a result of a merger or acquisition. Standard LPP's also imposed a requirement for the fair and equitable integration of seniority lists.

It is important to recognize that the CAB's primary public interest justification for imposing standard LPP's was to preserve the stability of the air transportation system, not to improve the general welfare of of airline employees. In an era of strict regulation and entry control, labor strife at a single airline could disrupt the entire air transportation system.

However, in today's deregulated industry labor strife on one airline does not, except in unusual circumstances, threaten the stability of the entire air transportation system. Deregulation allows potential new entrants and established carriers the opportunity to provide service quickly and with a minimum of inconvenience for air travelers when a particular air carrier is experiencing labor strife.

The CAB recognized these important considerations in reviewing its approach to LPP's following deregulation. In addition, the CAB concluded that under deregulation private parties—that is, airlines and unions—were responsible for reaching whatever agreements were necessary to protect airline employees.

Consequently, after enactment of the Airline Deregulation Act of 1978, the CAB revised its policy on imposing LPP's. The CAB decided that it would impose LPP's only where necessary to prevent labor strife where the dispute would disrupt the nation's air transportation system, or where the air carriers involved in the merger, acquisition, or consolidation consented to protective provisions.

The Department has to date followed the policy of the CAB. We agree with the CAB's rationale and believe that it is consistent with the policies of deregulation to allow the private parties to the proposed transaction to reach agreement among themselves on the appropriate protections to be afforded employees in the event of a merger or acquisition.

Let me add that the Department has emphasized that it will consider the question of LPP's on a case-by-case basis. It has also emphasized that it will give interested parties in each case the opportunity to demonstrate why the Department's general approach should not apply in that case. In following this approach, I can assure you that the Department will render its decision on LPP's only after a careful weighing of the relevant facts and other considerations bearing on this issue.

Neither carrier management nor employees, however, should continue to look to the Government to assist in the determination of employment and wage policies, except where the stability of the national air transportation system is jeopardized or in other special circumstances. The role of the Government must be to remain neutral. To do otherwise could inhibit the collective bargaining process and undermine the development of the competitive environment that Congress sought to promote when it passed the Airline Deregulation Act.

That concludes my summary, Madam Chairman. I will be glad to respond to any questions you or Senator Ford might have.

Senator KASSEBAUM. Thank you very much, Mr. Scocozza. I believe that labor, in their testimony, will indicate that your interpretation, or the Department of Transportation's interpretation, of section 408 is inconsistent with Congress' intent. Do you agree with this?

I assume you certainly do not, from your testimony this morning, but could you elaborate a bit on why you think that it is not inconsistent?

Mr. SCOCOZZA. Senator, the statute in section 408 requires the Department to consider what conditions are in the public interest when we approve a merger, an acquisition, or a transfer. In that particular situation, there is no requirement that labor protective provisions actually be imposed.

The situation before 1978 was clear. We were dealing with a very, very strictly, regulated environment. If there was a hole in the system it could have impacted the whole national network. In those particular situations, the CAB did impose labor protective provisions.

In the environment after 1978, it is clear that is not the case any longer. Even when the United Airlines strike occurred, we did not find a situation where our national system was in jeopardy.

In terms of the statute itself, there was an attempt in 1982 to require labor protective provisions. The Congress in not requiring the labor protective provisions, in our estimation, leaves the question open to the discretion of the Department of Transportation; or at that time to the discretion of the Civil Aeronautics Board.

It was tested in court, and the Court of Appeals for the District of Columbia affirmed that the discretion was in the Civil Aeronautics Board. We have inherited the responsibility to determine on a case-by-case basis if in fact, LPP's should be imposed.

Our criterion is national labor strife, which is almost identical to the criterion that the Civil Aeronautics Board imposed, and that was the criterion that the court was looking at when it ruled in 1983, I believe.

Senator KASSEBAUM. But isn't it true that has really been fashioned on an ad hoc basis, so to speak, from the beginning of the statute, as it was incorporated into the Federal Aviation Act? Early criteria for what could be judged to be labor unrest have been defined in other ways, is that not so?

Mr. SCOCOZZA. That is correct, Senator. We really did not ever have a statute that required labor protective provisions. This was born in the 1950's by administrative action at the Civil Aeronautics Board.

And as our national transportation system evolved and changed, it was decided by the Civil Aeronautics Board and sanctioned by the Department of Transportation on sunset that the new formulation—national labor strife—would be the element that would require the imposition of labor protective provisions.

In other words, even very early on, the Civil Aeronautics Board's criterion was not employee benefits or employee compensation or the welfare of the employee; it was concern for the national transportation system.

Senator KASSEBAUM. Well, in your view of industrywide labor unrest, do you envision that LPPs would ever be something that would be considered to impose?

Mr. SCOCOZZA. That is why, Senator, I said in my testimony that we would leave that question open for parties to develop in all cases. As a matter of fact, we have two cases pending presently.

One involves the merger of Piedmont Airlines and Empire Airlines, and that is an active question before the Department of Transportation now. The burden is on the parties to develop the need for labor protective provisions, or to demonstrate why the existing policy would not be applicable. And we should certainly have hearings and let both sides on the question develop their arguments before the Department.

Senator KASSEBAUM. Well, there is one issue that I know has concerned me and I would guess the rest of the subcommittee. It is pending now before the Department in the form of a proppposed rule governing the purchase and sale of slots at the four high density airports.

Can you tell us when the rule will be forthcoming and what it will do? Assuming that slots could be sold, would not labor seek to have LPP's extended to slot purchases?

Mr. Scocozza. If we do have buying and selling—and that is an active question before the Department of Transportation now. In previous testimony I indicated that the Department of Transportation would make a formal recommendation that would have to be approved through the OMB regulatory approval process by December 1, and hopefully we could have a rule out on the street by December 31.

If in fact there is a legal buy/sell mechanism, it could be argued that would be property and that would fit under the section 408 provision of an acquisition by another carrier. And yes, of course the argument could be made that labor protective provisions could go along with buying and selling of slots. But I have not in my own experience seen any submissions in the buy-sell rule by any representatives who have spoken on that issue.

I do not preclude it. I am just not familiar with any submission, and I will be glad to check the record and provide you with copies of any comments on that.

Senator Kassebaum. Well, I would appreciate it. I have reservations about buy-sell as a policy, but that is beside the point.

Senator Ford.

Senator Ford. Thank you, Madam Chairman.

Mr. Secretary, I am going to go through a little scenario here and ask you some questions, and most of them can be answered yes or no, I think, or right or wrong, and we can go from there.

I understand that for more than 30 years prior to deregulation the CAB routinely imposed LPP's on transactions subject to Government approval. Is that correct?

Mr. Scocozza. It is, Senator.

Senator Ford. And one of the reasons CAB imposed these LPP's is because it desired to minimize any kind of labor strife on the particular carrier, is that basically correct?

Mr. Scocozza. That is correct.

Senator Ford. And another of the articulated reasons is that the Board was concerned with employee welfare. Do you agree with that?

Mr. Scocozza. I agree that that was one of their considerations, but the national transportation system I think was the predominant concern.

Senator Ford. Well, I suggest that you might read Captain Duffy's testimony if you get an opportunity.

Mr. Secretary, I understand that during that time there was never a labor disruption due to employee job losses caused by such a transaction, is that correct?

Mr. Scocozza. I am not specifically familiar, Senator, but that sounds like it is correct.

Senator Ford. Well, sounds like and being——

Mr. Scocozza. There might have been some exceptions, but I think generally it is correct.

Senator Ford. And I understand that there was never labor disruptions caused by the integration of the employee groups of the two merging carriers, is that correct?

Mr. SCOCOZZA. Correct.

Senator FORD. Now, I take it that you recognize that jobs and seniority integration are important matters to airline employees. That the type of issues you might expect a labor disruption over if there was a major disagreement with a carrier. Is that a correct statement?

Mr. SCOCOZZA. Yes.

Senator FORD. And the fact that there never was this sort of disruption suggests that LPP's serve their intended purpose?

Mr. SCOCOZZA. That is hard to answer, Senator.

Senator FORD. Well, I think history almost makes the question moot, but I wanted to get your opinion on it.

Mr. SCOCOZZA. I would say, Senator, in the context of the pre-1978 regulatory scenario, that is correct. But I would say that we could not consider those situations, post-1978, and say the same things about almost all of those questions.

Senator FORD. Why?

Mr. SCOCOZZA. Because, Senator, pre-1978 the Civil Aeronautics Board literally regulated the fares between Paducah, KY, and Knoxville, TN. Everybody who was in that market paid the same thing.

Senator FORD. Try Kansas City as well.

Mr. SCOCOZZA. And Kansas City. I say Paducah, KY, because that is where I lived during those pre-deregulatory days.

Senator FORD. I understand that, and we have never held it against you.

Mr. SCOCOZZA. But the scenario that we had, Senator, in those days, no matter who merged, no matter who changed and no matter where they flew, they always knew that they were going to be able to recover their costs. They always knew that the regulatory scenario would protect them in terms of making sure that they were able to recover their costs in their protected operating environment, and no other carrier would go into those markets.

We have a completely different situation after 1978 now. We have some of our more traditional carriers, competing with post-deregulation carriers that have much, much lower costs, very different operating scenarios, and much different labor agreements.

And when we have mergers and acquisitions, we have to rely on the carriers and the labor unions together to design their airline for the future. And I do not think we could ever generalize as to what is the minimum or the maximum. That is a problem we have after 1978.

Senator FORD. Does this era make the employees more vulnerable?

Mr. SCOCOZZA. I do not think it makes the employees more vulnerable. What it does is it protects the employees' future. For instance, Senator, there were four merger opportunities that the Department of Transportation acted on this year: Midway-Air Florida, Southwest-Muse, the Pan Am-United transfer case, and People Express-Frontier, which was, incidentally, decided last night.

In all of those cases—well, let me take Midway-Air Florida and Southwest-Muse. Muse and Air Florida were virtually dead carriers, and it was made very clear that, if labor protective provisions were imposed, the mergers would not have taken place. Thousands of employees would have been out of work.

Now, Midway and Southwest would continue to fly and what they would have done was just picked up the pieces for a lot less money. So labor protective provisions in those particular cases would have been destructive, not only to the national transportation system, but would have been destructive to the welfare of the individual employees, because they literally would have been out of a job.

And in those particular cases, there were union agreements for the most part I do not want to say across the board that there was 100-percent agreement with all of the union shops and whatever, but there was evidence on the record labor and management were working together to design an effective and a strong working scenario for the future.

Senator FORD. Well, you mentioned People. Is People union or nonunion?

Mr. SCOCOZZA. They have reached for the most part, Senator, a compromise with all of the labor unions on the Frontier system their merger partner. I do believe that there were one or two unions that did not reach an agreement, but there are negotiations that continue on.

Senator FORD. I understand that in the merger and acquisition cases that the Department has acted upon since assuming the CAB's duties, it has said that it will impose—and I think you have already substantiated that—labor protective provisions only where there would otherwise be "disruption to the air transportation system as a whole." Is that a correct statement?

Mr. SCOCOZZA. Yes, that is correct, Senator.

Senator FORD. I understand that in none of the cases handled by the Department have LPP's been imposed, including the sale of Pan American's Pacific division to United. Is that correct?

Mr. SCOCOZZA. Correct.

Senator FORD. Now, I understand that the articulated reason for this change in policy is that deregulation means that LPP's are no longer necessary. But as far as I can see, neither when the ADA was passed or at any subsequent time did Congress ever give any indication that it intended the longstanding LPP doctrine to be abandoned. In fact, to the contrary, both Senator Kassebaum and Congressman Mineta, Chairman of the House Subcommittee on Aviation, have expressly stated that Congress' intention was that LPP's continue to be imposed in the traditional manner. And I underscore and emphasize, "traditional manner."

Now, given those facts, it is odd that DOT has reached the conclusion that Congress intended to do away with LPP's in the ADA, or any other legislation, is it not?

Mr. SCOCOZZA. It is not fair for us to say that Congress intended to do away with LPP's, Senator. But I think it is fair for us to use our discretion in looking at when and where LPP's would not be imposed.

In terms of the exercise that you were just talking about, Senator, that was about 1982. The Civil Aeronautics Board had already had their policy off not routinely imposing LPP's in place for 3 years.

Congressman Mineta may have been talking about "traditional" in terms of pre-ADA practice, but, as we have shown, the current standard has been followed since 1979 by the Civil Aeronautics Board—this is not a new policy. DOT has been continuing this same policy since January 1985, when section 408 authority was transferred to the Department.

The policy was established back in 1979 during the Pan Am-National days. Incidentally, although LPP's were imposed in that case for procedural reasons, the policy of not routinely requiring was established National labor strife was the criteria that we put in place in 1978 and we continue to use that standard today, because that is a situation that we believe would be adverse to public interest.

We have not to this day seen any other special situation or circumstance which would lead us to alter that, but the Department of Transportation has, while the CAB has not, left the question open for the parties to develop in every record before us.

We presently have two before us now, Horizon-Cascade and Piedmont-Empire. The parties are more than welcome, and they are in fact going to attempt to develop that question, and explain why the policy is not consistent with the public interest and why LPP's should be imposed.

But it would be disingenuous, Senator, if I did not say that the Department of Transportation would consider that a burden that has to be overcome. Absent other special circumstances, we do believe that to require LPPs' in public interest we would certainly need to see that there would be a disruption in the national transportation system.

As regards individual carriers, Senator, I feel comfortable in saying that if labor unions felt that they were getting the raw end of the deal in a merger, that merged airline would never fly. If even one element of the labor work force, for instance the machinists or the pilots or the flight attendants, felt that they were not fairly dealt with, through the collective bargaining process, they could also prevent that airline from flying at all until the dispute was resolved.

If we in fact imposed LPP's, we would just be setting up procedural guidelines which could, in fact, make the exercise much longer. The arbitration processes and the procedural elements of the LPP's often remain in dispute for years after approval of the transaction. As we have seen under the Civil Aeronautics Board, when management and labor have not been able to agree on the terms of on a transfer or a merger, they have asked for the imposition of LPP's because they are saying that the transaction is moving so fast they do not have time to come to a voluntary agreement. So what they do is ask for voluntary LPP's so as to protect the unions' interests during the merger case.

Senator FORD. How many voluntary agreements have you been given?

Mr. SCOCOZZA. Those situations have not presented to the best of my information presented themselves at the Department of Transportation. However, the CAB applied LPP's at the request of both management and labor on several occasions since deregulation.

Senator FORD. Well, Madam Chairman, I will not take too much longer. But Mr. Secretary, let us return to the DOT's new standard for a minute. And if I am incorrect in any of my statements, I want you to call my hand on it at that point.

I understand that in the hearing on the Pan Am-United sale there was uncontroverted evidence submitted by several employee groups, particularly the Teamsters, that failure to impose LPP's would cause the shutdown of Pan Am and possibly United. There was also uncontroverted evidence that strikes earlier in the year adversely shut down both Pan Am and United.

Yet, the Department made findings that the strike against those carriers "did not result in serious service problems during the past year" and that a strike against Pan Am and United would probably not threaten the air transportation system.

It appears that the Department is rather conclusive in its decision. Have you simply ignored the parts of the record that do not assist in reaching the desired result?

Mr. SCOCOZZA. Senator, in that particular case, while you are correct that the record did indicate by some of the parties that there may in fact be a strike if the labor unions did not resolve their differences, there was also information from the parties, presented by the airlines, indicating that they had every intention of amicably working out solutions with all of the labor unions.

And in fact, at Pan Am and United there are labor contracts that are similar to many others in the industry, which provide protections from downgrades, reductions in force, and terminations to their own employees regardless of whether the carriers are merged or not merged. So there are protections that are already available from the individual airlines to their own employees.

But there is also evidence in the record by Pan Am and United to indicate that because of the merger both of the carriers would be stronger and both projected increased hirings. So when we took the record as a whole, we found that the labor protective provisions were not in order.

Senator FORD. Well, one more question, Madam Chairman, and then I will quit, and then I will have some questions for the Secretary in writing.

It is my understanding that neither Pan Am nor United produced any evidence suggesting that LPP's would have any material cost to them. Is that correct?

Mr. SCOCOZZA. I am not familiar with that aspect of the record, Senator. But I do know that Pan American did indicate that if LPP's were to be imposed that the merger would be off or that the transfer would be off.

Senator FORD. Would you send me that evidence?

Mr. SCOCOZZA. I will.

[The following information was subsequently received for the record:]

Testimony of C. Edward Acker, Chairman of the Board and Chief Executive Officer of Pan American World Airways

PACIFIC DIVISION TRANSFER CASE, AUGUST 5, 1985.

Question. And so, you're saying that if labor protected (*sic.*) provisions are imposed, you're going to refuse to close the deal.

Mr. Acker. Yes. (Transcript at 398.)

Question. Mr. Acker, I believe that you previously testified that if LPP's were imposed Pan Am would back out of the deal.

Mr. Ackler. Yes, sir. (Transcript at 430.)

Brief of Pan American World Airways to the Department of Transportation in the *Pacific Division Transfer* case, at page 84.

"Joint Applicants strongly oppose the requested LPPs; Pan Am has already determined that LPPs would seriously impair its ability to operate and, if imposed, would cause it to abandon the transaction." (citations omitted).

Senator Ford. I think in fact the evidence in the hearing was that costs were minimal.

Thank you, Madam Chairman.

Senator Kassebaum. Thank you very much, Mr. Scocozza.

Mr. Scocozza. Thank you for having me.

[The statement follows:]

Statement of Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, Department of Transportation

Thank you for the opportunity to appear before your subcommittee today to discuss the Department of Transportation's views on the imposition of labor protective provisions, or LPP's as they are commonly referred to, in cases involving section 408 of the Federal Aviation Act.

Congress has provided, through the Railway Labor Act, that disputes involving wages, seniority, and other conditions of the workplace in the airline industry be resolved through the collective-bargaining process. This is consistent with the treatment of labor-management disputes in virtually all other sectors of our economy. Except where LPP's are warranted by special circumstances, such as the occurrence of a systemic disruption, airline management and employees should rely on collective bargaining, and not mandatory LPP's, as the means of resolving labor disputes arising out of proposed mergers and acquisitions. The Department will not act in place of the National Mediation Board for the airline industry, nor insinuate itself into the collective bargaining process.

Before the enactment of the Airline Deregulation Act of 1978, the Civil Aeronautics Board routinely imposed LPP's as a condition to its approval of mergers and acquisitions under section 408 of the Federal Aviation Act, but less routinely as a condition to its approval of route transfers. The LPP's generally provide that employees whose jobs are lost, downgraded, or transferred as a result of an airline acquisition or merger are entitled to financial compensation from their employer. LPP's also require the carriers to integrate the seniority lists for the two carriers' employees on a fair and equitable basis.

The rationale for imposing LPP's was that, under a highly regulated system of air transportation with extremely limited and time consuming opportunities for additional route entry, measures needed to be taken to mitigate the prospect of disruption of the air transportation network due to labor strife arising from the implementation of an approved merger or acquisition. The focus of the Board's concern, however, was the stability of the nation's air transportation system, and not employee welfare.

With deregulation of the nation's airline industry, carriers gained the freedom to enter all domestic routes and many international routes based upon the relative demand for additional service in the market. Moreover, the United States' adoption of pro-competitive policies led to an increase in the number of United States and foreign carriers serving most limited entry markets. As a result of these changes, a labor dispute involving an individual carrier's operations no longer held such omnibus implications for the overall national air transportation system. If one carrier cuts back service, another airline is easily able to enter the market.

The first rate in which the CAB considered the issue of LPP's after enactment of the Airline Deregulation Act was the *Texas International-National Acquisition* case. The Board announced in that decision that it would only impose LPP's where required by "special circumstances." Although it did impose LPP's in that instance because the labor parties did not have notice of the Board's new standards, the Board made clear that it would no longer routinely condition section 408 transactions with LPP's.

The CAB subsequently refined the standards that it used to evaluate the need to impose LPP's. The Board stated that it would generally limit LPP's to those circumstances where it believed they were necessary "to mitigate possible labor strife that would adversely affect air transportation as a whole." This standard has been followed consistently in recent years by the CAB, and now, by the Department. It reflects the historic concern for the stability of the air transportation network that has always been present when considering the need to impose LPP's; it also recognizes the fact that any relationship between the stability of the system and a labor dispute at a particular carrier has become substantially attenuated as a result of deregulation.

It is consistent with the policies of deregulation, and with the treatment of other unregulated industries, to allow the private parties to a proposed transaction to come to agreement among themselves on the appropriate protections to be afforded employees in the event of a merger, acquisition, or route transfer. Labor interests are represented in this process through collective bargaining with carrier management. Where all sides have agreed to the LPP-type benefits as a condition to a proposed transaction, there is no need for intervention by the reviewing agency. However, where no prior agreement has been reached, regulatory intervention could serve to undermine the collective bargaining process by encouraging one side to achieve by government order what it could not accomplish at the bargaining table.

At the Department of Transportation, we first considered the question of LPP's in the context of two airline acquisition cases, the *Midway-Air Florida Acquisition Show Cause Proceeding* and the *Southwest Airlines-Muse Air Acquisition Show Cause Proceeding*. In both cases the Department clearly stated that it would continue to assess the need for LPP's based upon the potential for labor unrest which might disrupt the national air transportation system. However no party, in either case, sought to demonstrate that this potential existed in the transactions were approved without mandatory LPP's. Therefore, the Department found no basis to condition its approval on the imposition of LPP's. The rationale for these decisions is consistent with precedent that we have inherited from the CAB, as well as with the policies and principles of deregulation which seek to reduce governmental interference in the allocation of economic resources.

Although the standards for the imposition of LPP's were not met by the Labor parties participating in either of these cases, the Department also noted that imposing LPP's would be unlikely to benefit any of the affected employees, and might even place them in a more disadvantageous position.

The *Midway-Air Florida* case concerned Midway's proposed acquisition of Air Florida's assets. Air Florida had filed for bankruptcy in the summer of 1984 and suspended all operations. It was able to resume operations later that year only because Midway had provided financial assistance under a joint operating agreement. Midway also agreed to purchase all of Air Florida's assets, subject to the Department's approval under section 408.

However, Midway stated that it would not go forward with the purchase if the Department were to impose LPP's, thereby ending any possibility of Air Florida employees retaining their current jobs. Based upon these circumstances, the Department concluded that the imposition of LPP's would not benefit the Air Florida employees.

In the *Southwest-Muse* case, the Department also found that requiring LPP's might reduce the job opportunities of workers at the acquired carrier. Muse was experiencing serious financial difficulties, and its ability to continue operating, absent the acquisition by Southwest, was doubtful. Southwest repeatedly stated that it would not acquire Muse if the Department imposed LPP's. As a result, the Department determined that the "imposition of LPP's could cause the employees of Muse to lose their jobs, an outcome that would clearly be inconsistent with their welfare."

The Department also considered the issue of LPP's in the *Pacific Division Transfer* case, which involved the transfer of Pan American's Pacific route authority to United Airlines. Relying on the policy applied in CAB precedent, as well as in the Department's recent decisions in the acquisition cases which I have just discussed, the Secretary found that the proponents of LPP's had not demonstrated that the air transportation system was, as a whole, likely to experience disruption due to any potential labor unrest resulting from the implementation of the route transfer, and had not shown any reason why the past LPP policy should not be applied. The Secretary recognized that a strike might cause some passenger inconvenience on routes served by United and Pan American, but that no threat to the overall air transportation system was likely. As the Secretary pointed out, both Pan American and United experienced major system-wide labor strikes earlier this year without any destabilization of the nation's air transportation system.

As the Secretary noted in the *Pacific Division* case, were the government to impose the kinds of conditions requested by the labor parties, it would place the airline industry in an entirely different position from enterprises in other sectors of our economy. Such a result would be inconsistent with both the policies and principles of airline deregulation.

Deregulation has brought air travelers a significant improvement in the choice of available services and fares in most markets. It has also allowed the airline industry the freedom to respond to market demands with a minimum of regulatory intrusion. However, with this freedom to compete comes the challenge of developing an efficient cost structure. Before deregulation, when fares were set by the CAB, the costs of doing business, including employee salaries, were automatically passed on to passengers in an environment largely devoid of meaningful competition.

Today, however, carriers whose work rules, employment levels, and wage structures were developed during the era of regulation must compete in an open market with low-cost airlines that began service after deregulation. As carriers continue to align their cost structures with the needs of a competitive environment, it will remain necessary for carrier management and employees to sit down together and reach agreement on a program that best meets the needs of both sides.

One thing is certain, however. Neither carrier management nor employees should continue to look to the government to assist in the determination of employment and wage policies. Except where the stability of the national air transportation system is jeopardized, or in other special circumstances, the role of the government must be to remain neutral. To do otherwise could inhibit the collective bargaining process and undermine the development of the competitive environment that Congress sought to promote when it passed the Airline Deregulation Act.

This concludes my prepared testimony. I will be happy to answer any questions that the committee might have.

Senator KASSEBAUM. The next witness is captain Henry Duffy, president of the Air Line Pilots Association. Captain Duffy.

STATEMENT OF CAPT. HENRY A. DUFFY, PRESIDENT, AIR LINE PILOTS ASSOCIATION; ACCOMPANIED BY RUSS BAILEY, LEGAL DEPARTMENT

Mr. DUFFY. Good morning, Madam Chairman. With me today is Mr. Russ Bailey, a member of our legal department with the Air Line Pilots Association.

On behalf of the 34,000 pilots that we represent on 50 airlines, we want to thank you for your longstanding interest in labor protection and the problems that we are experiencing. And to Senator Ford, let me just say that we appreciate your interest at the present time in the turbulence that is going on in our industry with all of the financial transactions that are taking place.

As we all know, the deregulation transition process has been extremely turbulent for our industry. Not only have the carriers struggled to adapt to the new regulatory and economic environment with internal corporate restructuring, but a number of external forces such as the recession, high interest rates and fuel prices and the air traffic controllers walkout have exacerbated the pain of this process.

During the past 7 years since the enactment of the Airline Deregulation Act, we have experienced a wide variety of corporate transactions, some traditional and others quite novel, including mergers and acquisitions, chapter 11 reorganizations, creation of alter ego airlines, route sales, major asset sales, and most recently the phenomenon of a hostile takeover and a leveraged buyout.

While each of these transactions is different in purpose and scope, they all have at least one common element. They all have a potentially adverse effect on the airline's employees.

Some of these transactions have had legitimate business purposes, but unfortunately in others management has sought to gain competitive advantage at the expense of its employees through the thinly disguised schemes to circumvent the collective bargaining process and reduce their wages and working conditions or replace them altogether with non-union workers.

It is becoming increasingly more difficult for ALPA and other airline unions to ensure the contract rights and employment security of their members because carriers are resisting any limitations on their transactions regarding employee protection and the DOT is taking a hands-off policy.

Historically, the Government imposed protections, known as labor protective provisions or LPP's, for airline employees affected by commercial transactions subject to Government approval. These LPP's have provided a reasonable and workable means of reducing the hardships caused by mergers and similar transactions and at the same time for promoting stability at the affected carriers.

Unfortunately, in spite of clear Congressional intent to the contrary, the DOT has used deregulation as an excuse to abolish this longstanding and effective formula. Since assuming the role of the now defunct CAB, the Department of Transportation has taken the suggestion to heart and has issued several decisions which amount to a total abandonment of their labor protective doctrine.

In the *Midway-Air Florida acquisition case*, the *Southwest-Muse acquisition case*, and most recently in the *Pacific division transfer case*, DOT has held that LPP's will no longer be imposed in merger and acquisition cases because, in DOT's judgment, employee protection is no longer necessary.

According to DOT, the original reason for imposing protection was—and you just heard it again—after all, only to prevent merger-related strikes which might disrupt air transportation. The Government's purpose, we are now being told, was not to promote employee welfare as such, but only to prevent conditions from deteriorating to the point where a strike would occur.

Now that deregulation has freed up the marketplace so the other carriers can quickly fill the gap when a strike terminates a competitor's service, there is no need for any Government attention to be paid to the needs of the employees caught up in an airline merger or acquisition because the public will still get service even in the event of a strike.

But it is a gross distortion of history for DOT to say that the LPP doctrine was not born out of consideration for equity and employee welfare. The doctrine was promulgated in the 1952 *United-Western acquisition case*, where the Board itself stated:

> A route transfer or a merger or a similar transaction presumably involves benefits to the stockholders of the companies who are parties to it. On balance, it must also benefit the public as a whole, otherwise, we would disapprove it.
>
> Very often these benefits to the stockholders and the public will be at the expense of some of the employees of the companies involved. We think it only equitable that in such circumstances the hardships borne by adversely affected employees should be mitigated by provisions for their benefit.

The Board has continued over the years to acknowledge that the LPP doctrine was premised upon considerations of simple equity and not, as the DOT now says, merely as an ad hoc barrier against anticipated strikes. I have cited several other cases in my statement to support this thesis.

Hence, the Board's suggestion that deregulation has made labor protection unnecessary because other carriers can now provide service in struck markets is utterly capricious. It overlooks the fact that LPP's have always been premised upon considerations of equity and that both the need and the occasion for fair treatment of workers remains unchanged by deregulation.

Now, as before, carriers need Government approval to merge. The Government grants approval only when it serves the public interest, and it is only fair that the benefits achieved not be paid entirely at the expense of the employees whose interests, after all, are part of the public interest.

In a word, DOT is moving in the wrong direction. Instead of abandoning labor protection, DOT needs to be considering the question whether and to what extent the preexisting protection doctrine needs to be modified or clarified in order to be responsive to the changes flowing from the new statutory and economic situation.

ALPA does not believe that there is only one right answer to such a question. We do believe that the DOT has seriously erred in concluding that these issues are no longer even worthy of consideration.

In passing, I am reminded that DOT's recent cases do not candidly and literally announce that LPP's will no longer be granted. Instead, DOT has phrased it this way: LPP's will not be imposed unless there is a prior showing that approval of the merger or acquisition will result in labor unrest that would threaten the air transportation system as a whole. And you just heard Matt Scocozza say it again.

I do not think anybody has been misled by that rhetoric. DOT intends to deny protection in every case. The new test for imposition of protection is a test which, considering its recent decision to deny LPP's in the *Pacific Division Transfer case*, the DOT believes can never be met. The only way to threaten the system as a whole in DOT's terms is for all of the employees of all of the major carriers to go out on strike at the same time.

Not only is it difficult to fantasize a merger or acquisition case which could motivate such a large group of people to such drastic action, but it should be a matter of embarrassment to the DOT that it invites employees to make such strike threats as a condition of receiving protection. As I have already indicated, protection is due as a matter of fairness and equity, not as a bribe against strikes.

We submit that not only is the DOT wrong in its conclusion that the Airline Deregulation Act has repealed the LPP doctrine, but as a matter of fact the Department has misread or rejected clear Congressional intent. Nothing in the Act even suggests that Congress intended to alter or abolish the longstanding doctrine.

In addition, there have been a number of other expressions of the intent of Congress that the responsible agencies should continue to impose LPP's. Madam Chairman, you yourself stated in 1982 during Senate debate on an amendment to delay the transfer of the CAB section 408 jurisdiction to the Department of Justice: "We request that the CAB continue to impose the standard labor protective provisions in a manner consistent with its handling of section 408 transactions prior to the enactment of the Airline Deregulation Act of 1978."

Frankly, I am amazed at the DOT's response to these Congressional admonitions to continue to impose standard LPP's, which in effect says that if you were really serious about LPP's you would have enacted an amendment to section 408 to require their imposition in any case. That strikes me as an invitation or perhaps a challenge to the Congress to enact legislation codifying the standard LPP's that the DOT is now refusing to impose.

Madam Chairman, the DOT policy not to impose LPP's is a two-edged sword against airline employees' welfare and our careers. Not only will employees adversely affected by mergers, acquisitions, and other corporate transactions be denied the most basic protections, but even more threatening to employees interests and rights is the fact that the new policy is a signal to airline managements that they are now free to engage in any type of corporate transaction without having to concern themselves with the harmful effect to the employees involved.

With the assurance that LPP's will not be imposed, companies can now devise novel corporate restructuring schemes the ultimate effect of which is to circumvent labor contracts and dilute the unions' bargaining strength. The most common example of this insidious behavior has been the establishment or acquisition of an alter ego airline. A holding company which has an airline subsidiary will create or purchase another airline to operate in tandem with the first carrier.

Generally, this scheme is used where the primary carrier has union contracts with its employees and the alter ego carrier has set up a non-union operation. The new airline will hire all new employees, but much of the capital assets necessary to get started, such as airplanes and financing, will come from the primary carrier through the parent company.

As time goes on, the holding company can pressure union employees into accepting substantial wage cuts and work rule changes. The threat, of course, is that if they refuse to do so the company will transfer flights, assets, and jobs from the union carrier to the non-union alter ego company. There is literally no way the unions can deal with this kind of unbalanced collective bargaining process.

If they resort to any self-help by striking, the company will simply augment the operations of the alter ego airline and leave the struck carrier and its employees to languish and ultimately disappear. A classic example of this scheme confronted the employees of TWA this summer in the proposed acquisition of that carrier by the Texas Air Corporation. Since most of us in this room know the details and outcome of that confrontation, beginning with the hostile takeover by Carl Icahn, I will not recite them now.

Suffice it to say that with the combining of two large carriers under the common control of Texas Air and without the benefit of LPP's for the employees, Texas Air would have had the perfect setup to leverage the higher paid contract employees of TWA into accepting major wage, benefit, and work rule concessions.

If the TWA unions resisted these demands, Texas Air would simply transfer assets from TWA to Continental, expand its operations and work force, and furlough TWA employees. In such a situation, good faith collective bargaining becomes nonexistent and all the tools generally available to bargaining representatives to deal with management, including strikes, are rendered inoperative.

Madam Chairman, the device that I have described here, when used to subvert union representation and to circumvent the collective bargaining process, does not conform to our national labor policy. That policy is founded on the right of workers to organize and negotiate in good faith for wages and working conditions.

The refusal of the Government to impose fundamental protections for employees who are adversely affected by corporate transactions encourages airline managements to use them to do what they would otherwise be unable to do under the law.

I have just described the most prevalent scheme, the alter ego airline. I am confident that creative minds in the airline management ranks will come up with others. Unfortunately, the Administration's policy on LPP's is an encouragement to those in the industry who would seek to gain such unfair advantages over their labor unions. The Congress cannot and should not be expected to deal with each of these insidious devices on a case by case basis, as it did with the chapter 11 device.

Therefore, what is needed now is an effective legislative reversal of the DOT's current position that the labor protective doctrine is for all purposes a dead letter. This is not to say that LPP's must be required in all cases subject to Government approval, but the DOT should impose them consistent with the pre-deregulation practice of the CAB, namely a presumption should be exercised in their favor.

LPP's have proven to be a reliable and workable means of reducing harm to employees and carriers alike. The time has not yet arrived to abandon the successful doctrine that has served as a valuable tool of public policy, and I strongly urge the committee to move promptly on such much-needed legislation.

Thank you, Madam Chairman.

Senator KASSEBAUM. Thank you, captain Duffy.

Maybe I should start by commenting on my statement which has been quoted by you and by Senator Ford, from the debate in 1982. I think, and this was borne out by the comments of Mr. Scocozza, that these decisions have frequently been reviewed on an ad hoc basis. And I think, too, that the underlying standard has changed from the initial one that was used to protect airline employees to the one that is used today, which apparently would require industrywide labor unrest before LPPs will be imposed.

I think it was important in 1982, when the Civil Aeronautics Board was still reviewing these cases, for the Board to recognize the importance of LPP's. The industry was still struggling through some significant changes. Those changes may still be occurring today in a different fashion, and they may be just as important, but I think to lock into concrete a principle would not serve either management or labor well, would be a sisservie to both labor and management. I think this is the intent of this hearing: to try and sort through some other interpretations of the standard that might be useful.

In that vein, I would like to ask if you have given any thought to any way that an LPP could be formulated which would be less intrusive than Allegheny-Mohawk?

Mr. DUFFY. Madam Chairman, I guess our position really is the LPP's have not been intrusive at all. They have ensured an orderly process, first of all, in seniority list integrations, and have really served as a bar to certain management initiatives that might be harmful to employees. The real cost of labor protection has been remarkably cheap in dollars.

What it has ensured is a great deal of labor peace. I think the greatest damage by the lack of imposition of labor protection is to the collective bargaining process.

Senator KASSEBAUM. Well, I was going to say, has not collective bargaining essentially been the answer to that piece, rather than in the legislative enactment of LPP's?

Mr. DUFFY. Well, the real truth of our industry at the present time is there are schemes being developed constantly—alter ego, hostile takeovers, that sort of thing—that are devised with at least an aim in mind to subvert the collective bargaining process. And at a time when we need probably a strengthened process in order to have some equality in dealing with management, we find that now the labor protective provisions which might have shored up that process are being taken away on a total basis, as we see it.

Senator KASSEBAUM. But you yourself have, I think, begun to use some counter-strategems that have proved to be, it seems to me, fairly effective. Take TWA, for instance. The campaigns that were waged in the press regarding the takeover attempts, the employee stock acquisition concepts that were discussed and utilized, had a big role to play, in particular in how the public regarded that whole transaction.

Mr. DUFFY. That was innovation born out of necessity, you might say.

Senator KASSEBAUM. Well, that is frequently where innovation comes from.

Mr. DUFFY. I think national labor policy depends on the collective bargaining process, and we do not really want to get away from that. To its extreme, what the DOT is suggesting is that I get together with Bill Genoese back here and some other presidents in the industry and we threaten a nationwide shutdown.

I mean, in its worst form what they are saying is, unless we do something like that we are not going to recognize that there is a need for some employee protection in this process. That is a direction that I think we should not be pushed.

Senator KASSEBAUM. But would you not agree that the climate has changed today in the industry, not just labor-management, but the whole atmosphere in which both sides have to exist and operate successfully? And how do you answer those on management's side who would say that, faced with having to provide mandatory labor protective provisions, or faced with a strike, they would simply not proceed with their merger, which in turn would mean a loss of jobs and could well mean that pilots would not be flying?

Mr. DUFFY. I will make two points here. One, in almost every merger I can remember, management said that, and even when labor protective provisions were then imposed the merger went forward anyway.

And secondly, labor protective provisions have, number one, been free. I mean, there has been no significant dollar cost involved.

And on the procedural side, which I think is very important, for seniority list integration, it has simply ensured a process of equity for the employees of both of the merging organizations. ALPA has internal procedures that apply when we have two ALPA carriers merging, that will ensure how the seniority list integration actually takes place.

That is not true when it is an ALPA carrier and a non-ALPA carrier, and there should properly be some concern about a sense of fairness which might not otherwise exist. I mean, if you have got one strong company and one weak company, the employees of the weak company are really at the mercy of the stronger company unless the union itself represents both employee groups and can ensure some sort of equitable process.

And I just think that is a proper role for Government.

Senator KASSEBAUM. Senator Ford.

Senator FORD. Madam Chairman, there is something here that bothers me.

It is employees, people who have given years of service, that are getting hurt. Often they are shut out or they are not willing to make the sacrifice asked of them. Other times, a new group comes in and the quickest and best way to save money is to let a lot of people go.

I think there is a thread through LPP's that they are cost effective rather than negative. And if captain Duffy's statement is correct—a which I believe it is—that LPP's have not discouraged any mergers, why is there such a stonewalling by the Department of Transportation as it relates to concern and—I started to use "compassion," but maybe you do not have to have compassion in a business deal, but I would hope there would be some.

But captain Duffy, am I correct that LPP's do not eliminate collective bargaining, that LPP's do not eliminate the fact that the employees and new management at some point will get together, sit down across the table and work out problems? The imposition of LPPs does not prevent that in the near future or the near term. Am I correct in that statement?

Mr. Duffy. Senator Ford, you are. LPPs ensure some equality between management and the unions in the collective bargaining process. Without labor protection, the union group is at a considerable disadvantage in having to deal with any number of manipulative devices that management might come up with in order to move us across the bargaining table.

And once again, it has worked so well in the past and it has not cost money that I am not sure why this sudden reversal or why the stigma has been laid on labor protection.

Senator Ford. I do not, either. Those who acquire airlines are not necessarily paupers. They have huge law firms at their disposal. And I suspect that they have a mandate to look at what we once called innovative ideas, to see how they might be able to take over new businesses.

You know, it is strange to me that when you take over a business, you use their money as if you had it yourself—especially when you have very little of your own. That situation bothers me some.

When you find a take-over, there is not—and it still sticks in my craw, as we say down home, the first basis of any kind of savings from the pink-slipping of employees. And I do not think that that means the lowest level employee. I think it just starts at the top and goes down, and they begin to go out the door. The takeover organization puts their people in place and reduces as much as possible, and again to pick those who would not be cooperative and would be cooperative with the new ones. And pretty soon we find those maybe with less experience.

I have been flying a whole lot since 1956 and my odds are getting a little closer all the time. I want the best damn fellow up front I can get. And those on the ground, I want them to be the best, as well.

And one thing that bothers me is that we could possibly, in not allowing LPP's, not continue to have the best. I have said that before and they say, well, you might be locking in some that are not so good. Well, I will take my chances on that.

Madam Chairman, I have no further questions. captain Duffy I think has made an excellent statement here this morning, and I hope that somewhere along the way that, without mandating it by statutory language, that the Department of Transportation will have a change of heart, and if not we will have a change of leadership.

Senator KASSEBAUM. I will not comment on that.

Senator Trible?

Senator TRIBLE. Madam Chairman, I welcome Captain Duffy. I have gotten to page 12 of his statement. I will not ask any questions, but thank you for your contribution today.

Mr. DUFFY. Thank you, Senator.

Senator KASSEBAUM. Thank you very much, Captain Duffy.

Mr. DUFFY. Thank you.

[The statement follows:]

STATEMENT OF CAPT. HENRY A. DUFFY, PRESIDENT, AIR LINE PILOTS ASSOCIATION

Madam Chairman and Members of the Subcommittee, I am Captain Henry A. Duffy, President of the Air Lines Pilots Association, International, which represents over 34,000 pilots employed by 49 airlines. On behalf of ALPA I commend you for holding this hearing to address the issue of whether the DOT should impose labor protective provisions in mergers, acquisitions and other financial transactions in the airline industry; which could adversely affect employees.

As we all know, the deregulation transition process has been extremely turbulent for the airline industry. As expected a number of airlines have failed, others have been forced to retrench substantially, and still others have merged or sold off significant portions of their assets. There have also been a number of unforeseen external forces that have exacerbated the pain of this process, such as the recession, high interest rates and fuel prices and the air traffic controllers walkout. During the past seven years we have experienced a wide variety of corporate transactions including traditional mergers such as the North Central/Southern/Air West combination constituting Republic Airlines, the establishment of alter ego airlines such as New York Air, Frontier Horizon and Trans International, the Chapter 11 reorganizations of Braniff and Continental, the leveraged buyout of TWA, the United purchase of Pan Am's Pacific Division and the transfer of assets such as Frontier's sale of 25 737-200s to United to name just a few. While each of these transactions is different in purpose and scope, they all have at least one common element, and that is a potentially adverse impact on employees.

In some of these transactions management is pursuing worthy and legitmate business purposes to improve operations, enhance marketing strength, and increase profits, while at the same time considering and providing for the legitimate rights and concerns of its employees. However, in other situations the company is seeking to gain advantages over its competitors at the expense of its employees through thinly disguised schemes to circumvent the collective-bargaining process and either reduce their wages and working conditions or replace them altogether with nonunion workers.

It is necessary therefore for employee organizations such as ALPA and the other airline unions represented in this hearing to become involved in these transactions to the extent possible under the law to ensure that the contract rights and employment security of their members are adequately protected. This is becoming increasingly more difficult as carriers are resisting any limitations on their transactions regarding employee protection and the DOT is taking a hands off position. Consequently employees are being forced to develop creative new approaches to protect their interests, including employee ownership plans, and in some cases total opposition to the transaction involving such defensive tactics as corporate campaigns, proxy fights, litigation and legislation.

Historically, there have been protections, known as labor protective provisions on LPPs, afforded to airline employees affected by commercial transactions subject to government approval. While LPPs were normally applied in merger cases, the Civil Aeronautics Board also recognized that they were needed in functionally similar transactions because the need for such conditions depended on economic considerations and not merely on the form of the business arrangement.

By 1970 the Board, which had routinely imposed LPPs on transactions subject to its approval for over 20 years, had developed a formula that came to be known as the "standard LPPs." This formula is designed to afford protections to employees adversely affected by the commercial transaction and does not cover employee losses from other causes.

First, the standard LPPs provide a "displacement allowance" for the benefit of employees who remain employed but, as a result of the merger, are "placed in a worse position with respect to compensation." Second, the LPPs provide a "dismissal allowance," based on an employee's length of employment, for the benefit of employees "deprived of employment as a result" of the merger. Third, affected employees are guaranteed the continued receipt of fringe benefits "such as hospitalization, relief and the like." Fourth, employees required to move their place of residence as a result of the merger are entitled to reimbursement of certain moving, traveling and related personal expenses, and to specified protections against losses attributable to the forced sale of their residences or the cancellation of their residential leases. Fifth, insofar as the merger "affects the seniority rights of the carrier's employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner."

Finally, the LPPs establish a procedure for "final and binding" resolution of "any dispute or controversy [including a dispute over integration of seniority lists] . . .

with respect to the protections" provided. Thus, the formula specifies that "any party" may refer such dispute to arbitration if it cannot be "settled by the parties within 20 days", and contemplates "expedited hearings and decisions" with the salary and expenses of the arbitrator to be borne equally by the carrier and the employees' representatives. These standard LPPs have provided a reasonable and workable means of ameliorating the hardships caused by mergers and similar transactions and at the same time promoting stability on the affected carriers and in the airline industry generally. Unfortunately, in spite of plain Congressional intent to the contrary, the CAB and its successor, the DOT, have used deregulation as an excuse to abolish this longstanding and effective formula.

Shortly after enactment of the Airline Deregulation Act of 1978, the Civil Aeronautics Board began suggesting that the LPP doctrine might no longer be appropriate in a deregulated environment. Since assuming the role of the now-defunct Board, the Department of Transportation has taken the suggestion to heart and has issued several decisions which amount to a total abandonment of the protection doctrine.

In the *Midway-Air Florida Acquisition* case, Order 85-6-33, and the *Southwest-Muse Acquisition* case, Order 85-6-79, and in the Final Opinion and Order in the *Pacific Division Transfer* case (United-Pan American route and asset sale), just issued on October 31, DOT has held that LPPs will no longer be imposed in merger or acquisition cases because, in DOT's judgment, employee protection is no longer necessary. According to DOT, the original reason for imposing protection was, after all, only to prevent merger-related strikes which might disrupt air transportation. The government's purpose, we are now being told, was not to promote employee welfare as such, but only to prevent conditions from deterioating to the point where a strike would occur. Now that deregulation has freed up the marketplace, so that other carriers can quickly fill the gap when a strike terminates a competitor's service, there is no need for any government attention to be paid to the needs of employees caught up in an airline merger or acquisition, because the public will still get service even in the event of a strike.

But it is gross distortion of history for DOT to say that the LPP doctrine was not born out of consideration for equity and employee welfare. The doctrine was promulgated in the *United-Western Acquisition* case, 11 CAB 701, 708 (1950), *aff'd sub nom. Western Air lines* v. *CAB*, 194 F.2d 211 (9th Cir. 1952) where the Board itself stated: "A route transfer or a merger or a similar transaction presumably involves benefits to the stockholders of the companies who are parties to it. On balance, it must also benefit the public as a whole; otherwise we would disapprove it. Very often, these benefits to the stockholders and the public will be at the expense of some of the employees of the companies involved. We think it only equitable that in such circumstances the hardings borne by adversely affected employees should be mitigated by provisions for their benefit."

The Board continued over the years to acknowledge that the LPP doctrine was premised upon considerations of simple equity, and not—as the DOT now says—merely as an ad hoc barrier against anticipated work stoppages.

"The theory upon which the Board has imposed such corrections is that the substantial public and carrier benefits derived from a merger approved by the Board should not be at the expense of employees adversely affected by the resulting route alignment." *Limitation of Capacity Agreements* case, 57 CAB 641, 645 (1971)

". . . since the early 1950's the Board has concluded in merger cases that employees can [and should] be safeguarded by requiring the surviving carrier to accept detailed labor protective conditions. Any merger, including this one, may produce some employee furloughs, displacements, or other burdens. The labor protective provisions are founded on the equitable principle that the carriers benefiting from mergers should mitigate those employee hardships. Another aim of the protective conditions is to prevent industrial strife which can delay mergers and disrupt industry stability." *Northwest-Northeast Merger* case, 55 CAB 742, 753 (1970)

"In the mergers that have come before it, the Board has uniformly held that the protection of employees who may be adversely affected by the merger is an element of the overall public interest to be considered." *American-Trans Caribbean Merger* case, 55 CAB 684, 733 (1970)

"The LPPs were imposed to ease the burdens on employees from implementation of [a route exchange] agreement and thereby avoid industrial strife." *Pan American World Airways, Inc. and Trans World Airlines, Inc. Route Agreement,* 72 CAB 1, 14 (1977)

Hence, the Board's suggestion that deregulation has made labor protection unnecessary because other carriers can now provide service in struck markets is utterly capricious. It overlooks the fact that LPPs have always been premised upon considerations of equity, and that both the need and the occasion for fair treatment of workers remain unchanged by deregulation. Now, as before, carriers need government approval to merge; the government grants approval only when it serves the public interest; and it is only fair that the benefits achieved not be paid for entirely at the expense of employees whose interests, after all, are also a part of the public interest.

In a word, DOT is moving in the wrong direction. Instead of abandoning labor protection, DOT needs to be considering the question whether, and to what extent, the preexisting protection doctrine needs to be modified or clarified in order to be responsive to the changes flowing from the new statutory and economic situation. In the past, the protective formula was imposed in virtually every merger and acquisition case because such transactions were presumed to threaten widespread and adverse effects upon the carriers' employees. DOT may wish to examine the question whether this presumption remains true under deregulation. Likewise, in the past, the protective formula imposed was identical in each case, except for occasional amendments. Under deregulation, DOT may wish to consider the virtues of a more varied and flexible approach to the subject of what benefits should be required as a condition of merger approval. ALPA does not believe that there is only one right answer to such questions. We do believe that DOT has seriously erred in concluding that these issues are no longer worthy of consideration.

In passing, I am reminded that DOT's recent cases do not candidly and literally announce that LPPs will no longer be granted. Instead, DOT has phrased it this way: LPPs will not be imposed unless there is a prior showing that approval of the merger or acquisition "will result in labor unrest that would threaten the air transportation system as a whole."

But I do not think anyone has been misled by this rhetoric; DOT intends to deny protection in every case. The new "test" for imposition of protection is a test which, considering its recent decision to deny LPPs in the *Pacific Division Transfer* case, the DOT believes can never be met. The only way to threaten the system as a whole, in DOT's terms, is for all of the employees on all of the major air carriers to go out on strike at the same time. Not only is it difficult to fantasize a merger or acquisition case which could motivate such a large group of people to such drastic action, but it should be a matter of embarrassment to DOT that it invites employees to make such strike threats as a condition of receiving protection. As I have already indicated, protection is due as a matter of fairness and equity, not as a bribe against strikes.

As noted above, the CAB and DOT have concluded that the ADA repealed the labor protection doctrine. However, we submit that the agencies are simply wrong on this point. Nothing in the ADA even suggests that Congress intended to alter or abolish the longstanding labor protection doctrine. Not a single line in any committee report, nor a single legislator, even intimated that the doctrine might now be obsolete or unwarranted. To the contrary, that statute amended the Federal Aviation Act to require the Board to consider "the need to encourage fair wages and equitable working conditions" when making a public interest determination. See 49 U.S.C. Section 1302(a). The quoted language was not randomly selected. It is the very language that Congress used to authorize the Interstate Commerce Commission to impose labor protective provisions for the benefit of railway employees. See *United States* v. *Lowden*, 308 U.S. 225, 2381 (1939).

In fact, since deregulation Congress has repeatedly and explicitly stated its intention that the responsible agency continue to impose LPPs. For example, in 1982 Congress passed an amendment to 49 U.S.C. Section 1552 which delayed the transfer of the Board's section 408 jurisdiction to the Department of Justice. Madam Chairman, you stated during debate of that amendment on the Senate floor ". . . we request that the CAB continue to impose these standard labor protective provisions in a manner consistent with its handling of section 408 transactions prior to the enactment of the Airline Deregulation Act of 1978." 128 Cong. Rec. S57236 (daily ed. June 24, 1982). The desire of Congress that standard LPPs continue to be imposed was once again affirmed in 1984 when the Committee on Public Works and Transportation, in reporting the CAB Sunset Act of 1984, specifically stated in the report that "[t]he Committee expects the DOT will continue to impose labor protective conditions . . . ." H.R. Rep. No. 98-793, 98th Cong., 2d Sess. 11 (1984). Frankly I am amazed at the DOT's response to these Congressional admonitions to continue to impose standard LPPs which in effect said that, if you were serious about LPPs, you would have enacted an amendment to section 408 to require their imposition in any case. This strikes me as an invitation, or perhaps a challenge, to the Congress to enact legislation codifying the standard LPPs that DOT is now refusing to impose.

Apart from the fact that the Board and the DOT have misinterpreted Congressional intent with respect to the ADA, we submit that they are incorrect about the value of LPPs as a public policy. LPPs respond to a serious need, and they are a reasonable response. Commercial transactions in the airline industry can have a brutal impact on employees affected, especially pilots. As the result of such a transaction a pilot may find himself without a job or working at a much reduced salary. He may be forced to move himself and his family a significant distance to remain employed. The disruption to his life may be compounded by a seniority system that is unique to the industry. For pilots, seniority not only affects wages but also determines the pilot's domicile, the equipment and routes the pilot flies, the pilot's position in the cockpit, and the pilot's hours of work. Seniority for pilots, however, is only system seniority, that is, it is based on the date of hire with a particular carrier and is not generally transferable from one carrier to another. A displaced pilot who obtains employment elsewhere experiences a dramatic erosion in earnings by reverting to the bottom of the pay scale. Moreover, if the displaced pilot is in mid-career, re-employment is difficult if not impossible due to the industry's hiring qualifications regarding a pilot's age. The standard LPPs accommodate these concerns by requiring the fair and equitable integration of the seniority lists of two merging carriers and protecting the seniority of employees affected by other transactions such as the establishment of alter ego airlines.

In short, LPPs should be required not only as a matter of simple equity but also because such a requirement is good public policy. The prompt and fair resolution of potential labor problems is critical for carriers and employees alike. Unresolved, they produce instability, discontent, lower morale, and lower productivity. It is common sense that the good will that prevails in day to day labor management relations vanishes once employees begin to feel their job security or seniority status threatened, and these problems are compounded when employees have to deal with a new management. Without LPPs, the resolution of such conflict can be delayed for years, and employee groups may have a motivation to resort to self help. However, because standard labor protective provisions have been in use for close to thirty years, they offer a reliable and stable procedure that promotes trust between the parties and that encourages discussion of difficult issues on an accelerated schedule.

Madam Chairman, the DOT's policy not to impose LPPs is a two-edged sword against airline employees' welfare and careers. On the one hand, as outlined above, it means that employees who are adversely affected by mergers, acquisitions and other major corporate transactions will not have the most basic protection which has been routinely applied for the past 30 years. But even more threatening to employees' interests and rights is the fact that it is a signal to airline managements that they are now free to engage in any type of corporate transaction without having to concern themselves with the potentially harmful effects to the employees involved. With the assurance that LPPs will not be imposed, the companies can devise novel corporate restructuring schemes the ultimate effect of which will be to circumvent their labor contracts and dilute the unions' bargaining strength, and they can do it with impunity.

The most common manifestation of this insidious behavior to date has been the establishment or acquisition of an alter ego airline. This simply means that a holding company which has an airline subsidiary will create or purchase another airline to operate in tandem with the first carrier. Generally this scheme is used where the primary carrier has union contracts with its employees and the alter ego carrier is set up non-union. The new airline will hire all new employees, but much of the capital assets necessary to get started such as airplanes and financing will come from the primary carrier through the parent company. As time goes on the holding company will have the ability to leverage the union employees into accepting substantial wage cuts and work rule changes with the veiled threat that if they refuse to do so the company will simply transfer assets from the union carrier to the non-union alter ego and thereby increase its operations and workforce and cut back jobs at the primary carrier. There is literally no way the unions representing the employees can deal with this kind of unbalanced collective bargaining process and if they resort to self help by striking, the company will simply proceed to augment the operations of the alter ego airline and leave the struck carrier and its employees to languish and ultimately disappear.

A classic example of this scheme confronted the employees of TWA this summer in the proposed acquisition of that carrier by the Texas Air Corporation. As this Subcommittee knows, this case began in the spring with an attempt by Carl Icahn to gain control of TWA through the purchase of large blocks of the airline's stock. The incumbent management and the TWA unions joined forces in a vigorous effort to block Icahn's hostile takeover with a variety of defenses including legislation which this Committee developed and reported. In the meantime the TWA Board of Directors was seeking a so-called "white knight" to outbid Icahn and acquire the company with its blessing. On June 13, the TWA Board made a surprise announcement ~~that~~ it ~~had~~ accepted an offer by the Texas Air Corporation to acquire a controlling interest in the airline. It readily became clear to the TWA pilot group and ALPA as well as the other unions on the TWA property that we all had to redirect our efforts to work against the Texas Air acquisition. As you know, we formed an alliance with Mr. Icahn and the rest is history.

Many people, including some members of this Subcommittee, have asked us why we thought we would be better off with Icahn than with Texas Air, and that brings me to the point of this case as it relates to LPPs. We have dealt with the Chairman of the Board of Texas Air, Frank Lorenzo, for over 13 years—since he took over Texas International Airlines in 1972. It is not enough to say he is a tough negotiator and doesn't much care for labor unions. There are a number of airline executives with those traits and we are willing to do battle with any of them, including Lorenzo, in legitimate collective bargaining. But our experience with Mr. Lorenzo has taught us that his forte is not in driving a hard bargain at the table, but rather in breaking his commitments to his employees and others and devising schemes to circumvent the time-honored collective bargaining process. That's precisely why his acquisition of TWA as an alter ego airline in tandem with Texas Air's main subsidiary, Continental Airlines, posed such a serious threat to the pilots and other employees of TWA.

With this combination of two large carriers under the common control of Texas Air without the benefit of LPPs for the employees, Lorenzo would have the perfect set up to leverage the higher paid contract employees of TWA into accepting major wage/benefit and workrule concessions. If the TWA unions resisted his demands, Texas Air would simply transfer assets from TWA to Continental, expand its operations and workforce and furlough TWA employees. In such a situation, good faith collective bargaining becomes non-existent and all the tools generally available to bargaining representatives to deal with management, including strikes, are rendered ineffective.

We submit that devices such as I have described here, when they are used to subvert union representation and to circumvent the collective bargaining process, do not conform to our national labor policy which is founded on the rights of workers to organize and to negotiate in good faith for their wages and working conditions. And the refusal of the Government to impose fundamental protections for employees who are adversely affected by these devices simply encourages airline managements to use them to do what they would otherwise be unable to do under the law.

I have just described the most prevalent scheme, the alter ego airline, as it was designed to work in the TWA/Texas Air case, and I am confident that the creative minds in the airline management ranks will come up with others. Unfortunately, the administration's policy on LPPs is an encouragement to those in the industry who would seek to gain an unfair advantage over their labor unions by engaging in such anti-employee schemes. And certainly Congress cannot and should not be expected to deal with each one of these insidious devices on a case-by-case basis as it did with the Chapter 11 device. Therefore, what is needed now is an effective legislative reversal of the DOT's current position that the labor protective doctrine is, for all practical purposes, a dead letter. This is not to say that LPPs must be required in all cases subject to government approval, but that the DOT should impose them consistently with the pre-deregulation practice of the CAB, i.e., a presumption should be exercised in their favor. LPPs have proven to be a reliable and workable means of reducing harm to employees and carriers alike. Certainly the time has not yet arrived to abandon a successful doctrine that has served as a valuable tool of public policy, and I strongly urge the Subcommittee to move promptly on this much-needed legislation.

Madam Chairman, that concludes my statement, and I want to thank you and the members of the subcommittee for the opportunity to present our views. I will be happy to answer any questions which you may have.

Senator KASSEBAUM. Our next witness is Paul Ignatius, chief executive officer of Air Transport Association.

STATEMENT OF PAUL R. IGNATIUS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AIR TRANSPORT ASSOCIATION; ACCOMPANIED BY JAMES L. CASEY, ASSISTANT GENERAL COUNSEL

Mr. IGNATIUS. Senator Kassebaum, members of the committee:

I am accompanied by James L. Casey, assistant general counsel of ATA. I have a prepared statement which I request be made a part of the record of this hearing, and in order to conserve the committee's time I would like to make a brief oral statement and then respond to your questions.

Senator KASSEBAUM. That will be done.

Mr. IGNATIUS. The first thing I would like to say is that I am pleased to be here again to testify before this committee on this subject. I last appeared here, as you know, on September 24, 1982, when this committee considered the question of the imposition of labor protective provisions.

At that time I was accompanied by Howard Putnam, among others, who was then struggling to get Braniff back into the air. He was the chief executive of Braniff at that time. I would like to recall a statement that Mr. Putnam made during that difficult period when he was trying to revive the airline. Mr. Putnam said that if labor protective provisions were imposed, "they would raise serious and perhaps insurmountable obstacles in our path and make it far more difficult for us ever to revive and emerge under chapter 11."

We have had a very difficult time since 1978 because the legislation that the Congress enacted was a very fundamental and pervasive event. Captain Duffy used a phrase a few moments ago, "innovation born out of necessity." I think that is a very good phrase to characterize what not only ALPA has been compelled to face, but the airlines themselves.

But why did this happen? It happened because Congress, after many years of thoughtful consideration and after hearing testimony from a wide variety of people, concluded that the airline industry in the United States was fully capable of responding to the market in a way that other industries in the free enterprise system of the United States also respond.

The issue that has developed this morning in the witnesses that have appeared so far can be very quickly summarized. Captain Duffy has said and said very well that the pre-deregulation practice should guide current events. And Mr. Scocozza, speaking on behalf of the Administration, has said that the realities of the post-deregulation period should govern.

It seems to me that is the issue, and on that issue I believe that we have to deal with the situation as it is today and not as it was at an earlier period. It seems to me that the early history of the Civil Aeronautics Board with respect to LPP's was consistent with the general philosophy of the Government regulator overseeing a national transportation system and conditioning management decisions on the basis of a Government oversight.

You all decided in 1978 that there were problems associated with that and, while you knew there would be problems associated with deregulation, you opted as the Congress of the United States to depend upon the free market, to depend upon the free enterprise system and expose the airlines, their employees, their management, to those same disciplines and forces which have made our economy efficient, productive, and on which we must depend for the future.

Thank you, and I am prepared to respond to your questions.

Senator KASSEBAUM. Thank you, Mr. Ignatius.

One, I wonder whether you would respond to Captain Duffy's suggestion that LPP's can be effective and they do not cost any money? Is that how the airlines view them?

Mr. IGNATIUS. LPP's do cost money, because they impose any of a number of conditions that need to be met with respect to separation allowances, transportation to new locations, and so forth. Our urge to the committee is that these matters be left to the process of collective bargaining, as other matters are and as the circumstances are handled in other industries, and that there not be conditions imposed prior to each individual event.

There is a cost to LPP's by their very nature.

Senator KASSEBAUM. But on the whole, the concerns that LPP's address are ones that usually have to be met by the airline, is that not correct? Mergers and acquisitions are disruptive, and basically it would seem to me, management is going to do all it can to try and address those concerns. In a chapter 11 case, the court has a remedy that should be used to the greatest extent. But from your standpoint, can you identify a particular case where LPP's—and this would go back a ways—were imposed, and what type of costs were incurred as a result?

Mr. IGNATIUS. They do go back a ways. We will search the record and provide answers for the record of the hearing.

Senator KASSEBAUM. I would appreciate that. It would be very helpful.

Do you also believe that LPP's would not discourage mergers, if they were to be imposed?

Mr. IGNATIUS. Oh, I think they would discourage them, and I think there is—and by mergers, I would add acquisitions and sales, because it covers more than just the merger. And I believe that if they were imposed in this manner that there would definitely be a discouragement. I have quoted Mr. Putnam's comment earlier that I believe is relevant.

I think in the case of Pan Am and United in acquisition of the Pacific routes, I believe that Pan Am said as part of that proceeding that if LPP's were imposed that the sale could not go through. And if I understood testimony previously from Mr. Scocozza this morning with regard to the two cases he addressed at Muse and Southwest and Midway and Air Florida, he seemed to suggest, as I heard him, that those mergers might not have gone through had the LPP's been imposed.

I think the point I want to make quickly here is that, as we are responding, continuing to respond to the forces that were liberated as a result and consequence of the Airline Deregulation Act and seeking a new equilibrium, it is very important that there not be obstacles that would militate against the ability of the parties to respond.

There are some very difficult problems now: new carriers with lower costs, established carriers with different cost structures. Management and labor are working their way through these matters. There is a pretty good history in the last 6 or 7 years of working out these difficult problems.

And I do not think it is useful, since you have deregulated the airlines and because we are a free enterprise economy, now to somehow express a lack of confidence in what you have done and to impose as a kind of vestigial remnant of an earlier year labor protection restrictions or impositions on an industry that has now been fully deregulated. You are not talking about doing this in other elements of the economy, and there certainly are a lot of mergers going on almost every day of the week.

We say, why single out the airline industry particularly, because we are doing pretty well. If you look at steel, if you look at certain other industries, they are not doing so well. But there is more employment in our industry today than there was in 1978 when we were deregulated.

Senator KASSEBAUM. ATA has said in the past that LPP's are anticompetitive. Do you believe this is true of all labor protective provisions?

Mr. IGNATIUS. No, I do not. I think that labor protective provisions are matters that should be addressed by the parties, management and labor. And I do not come before you saying that all of these provisions are inherently wrong. I am simply saying they should be left to the parties to determine.

Senator KASSEBAUM. Senator Trible.

Senator TRIBLE. Madam Chairman, only to observe that Mr. Ignatius is a very persuasive spokesman for his industry. I am not sure, however, that the issues are quite as clearcut as you would suggest here today. But that is your reason for being here, to establish the parameters of our discussion. And I will read your testimony in detail and look forward to hearing from the other witnesses as well.

Mr. IGNATIUS. Thank you, Mr. Trible.

Senator KASSEBAUM. Thank you very much.

Mr. IGNATIUS. Thank you.

[The statement follows:]

STATEMENT OF PAUL R. IGNATIUS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AIR TRANSPORT ASSOCIATION OF AMERICA

My name is Paul R. Ignatius. I am Chairman and Chief Executive Officer of the Air Transport Association of America. I am accompanied by James L. Casey, Assistant General Counsel of ATA.

We appreciate the opportunity to participate in this examination of the disposition of section 408 of the Federal Aviation Act of 1958. That provision, which has given first the Civil Aeronautics Board and now the Department of Transportation authority to regulate inter-carrier transactions, is scheduled to sunset on January 1, 1989. We regard section 408 as a vestige of the intense regulatory system that Congress set aside in the Airline Deregulation Act of 1978 and we believe that it should expire as provided for in the law.

Section 408 originated in the Civil Aeronautics Act of 1938 and was modelled after a comparable provision in the Interstate Commerce Act. It is a detailed regulatory mechanism that proscribes consolidations, mergers, acquisitions of control, leases and operating contracts between air carriers and other air carriers, common carriers or persons substantially engaged in the business of aeronautics unless DOT approval of those transactions is obtained. The statute requires DOT to use a modified public interest test to evaluate approval applications. Moreover, it can impose conditions upon its approval of these transactions. As this summary reveals, both in pedigree and content, section 408 is a regulatory statute.

But today, the section's regulatory purpose is anachronistic. Congress enacted the Airline Deregulation Act because of its belief that the traveling and shipping public would be best served if government did not exercise economic control over the airlines. Section 408 subjects managerial decisions to government scrutiny and control within a legislative context that rejects the notion of control.

Furthermore, section 408 is an expensive anachronism. Management must always consider the possible reaction of the government when formulating business transactions of the type that section 408 covers. As a result, there is a third party to such transactions: the Department of Transportation. Its presence, and that of its predecessor, the Civil Aeronautics Board, have led to the imposition of conditions that often have been quite onerous and, therefore, costly. The best known are standard labor protection provisions, which are commonly referred to as *Allegheny-Mohawk* conditions.

Some parties have urged Congress to require DOT to impose standard labor protection provisions in air carrier merger cases, and a few parties have even suggested to Congress that it statutorily impose those conditions. These proposals merit a very clear response from us.

The airline industry strongly opposes the imposition of labor protection measures upon any inter-airline transaction. The imposition of such measures would jeopardize the benefits of increased airline industry competition that the traveling public has come to expect during the last several years. Such an imposition would treat the airline industry differently than other industries for no justifiable reasons. And it would arbitrarily interfere with the collective bargaining process in the airline industry.

The airline industry has undergone a fundamental transformation since the late 1970s. That transformation is attributable to the enactment of the Airline Deregulation Act of 1978 and the ever-increasing competition in international markets. As a consequence of these changes and other events over the last few years, the airline industry has seen some difficult and demanding times. Yet, the industry that has emerged is more vibrant and innovative. The beneficiary of the managerial independence that now characterizes the airline industry has been the traveling and shipping public.

As a service industry, airlines need to respond quickly and effectively to the wishes of consumers and the competitive pressures of both United States and foreign-flag airlines. Unreasonable restraints upon that ability to respond—whether they result from added or unnecessary costs or diminished managerial freedom, or both—ultimately will harm the public that the airlines serve.

By their basic nature, government-imposed labor protection measures would be inherently rigid and expensive. Nowhere have these characteristics been more obvious than in the *Allegheny-Mohawk* labor protection provisions which the Civil Aeronautics Board imposed upon airline merger and acquisition transactions during the 1970s. As all who are familiar with them would agree, they are very detailed, filling almost five pages of small type.

Their specificity, breadth and duration reflect the heavy regulatory hand of a bygone era. That regime has faded away and with it the justification for government-imposed labor protection provisions. The end of paternalistic government regulation and its replacement by competitive forces was, of course, exactly what Congress intended when it enacted the Airline Deregulation Act.

Finally, the airlines find it difficult to understand why labor protection provisions should be imposed on transactions involving airlines, while industries in which large corporations merge with or acquire other large corporations, with far greater numbers of employees affected, are free from government-created labor protection provisions. We see nothing that distinguishes the airlines from these other industries in this regard.

Labor protection is a matter for resolution through the collective bargaining process. We consider it remarkable that some of those parties that for decades have been committed to the collective bargaining process now evidence a lack of faith in it and wish to displace it with Federal intervention, either through legislation or by administrative action.

The inhibiting effect of government-imposed labor protection provisions upon potential inter-airline transactions is likely to be very potent. Airlines must be intensely cost conscious today and must consider prospective transactions in conventional business terms. Mandated labor protection provisions would impose additional costs upon transactions. This may mean that a financially strong airline will be dissuaded from completing a transaction with an airline in a less fortunate position. The frustration of such a transaction could easily result in the loss of employee jobs.

There is a related matter that is also of great concern to the airlines. It is section 43(d) of the Airline Deregulation Act, which contains the so-called duty-to-hire requirement. The Department of Labor has recently indicated that it expects to reissue its regulations implementing section 43(d). They are the subject of a lawsuit that is before a federal district court here in Washington.

The airline industry has often expressed its opposition to section 43(d). That provision is in our view more than an anomaly. It contradicts the very purpose of deregulation, which was to free the airline industry from the intrusions of federal economic regulation upon managerial prerogatives, such as, in this case, the hiring of individuals. And the draft regulations prepared by the Department of Labor, despite our strong objection, fail even to condition the right-of-hire upon a showing that an employee has suffered a deregulation-related displacement. Like the labor protection provisions discussed earlier, the duty-to-hire provisions are inconsistent with the philosophy of deregulation.

What particularly impresses us about this situation is how much circumstances have changed since section 43(d) was enacted. Over the last few years the airline industry has created many job opportunities, and employment in the industry today is higher than it was when the airlines were deregulated in 1978. These new jobs and employment levels reflect the reinvigoration of the industry that deregulation has brought about. The fears that deregulation would produce large scale unemployment simply have not materialized.

In summary, the airlines believe that section 408 should be permitted to expire on schedule on January 1, 1989, since its provisions have no place in a deregulated industry. Additionally, we wish to express once again our objection to the concept of a "duty to hire" and our concern about the Department of Labor's implementing regulations that fail even to relate that "duty" to a deregulation-related event.

Senator KASSEBAUM. Our next witnesses are a panel, and I would like to welcome: Mr. John Clarke, representing the Brotherhood of Railway and Airline Clerks, Flight Engineers' International Association, and International Association of Machinists and Aerospace Workers; Mr. William Genoese, director, Airline Division, International Brotherhood of Teamsters; and Ms. Lynn Egge, Joint Council of Flight Attendants.

Welcome. May I say before we start, I would hope that you could keep your comments to 5 to 7 minutes if possible. Thius would allow time for us to question all of you after you have completed your comments.

Ms. Egge, we will start with you, please.

STATEMENTS OF LYNNE EGGE, JOINT COUNCIL OF FLIGHT ATTENDANTS; WILLIAM F. GENOESE, DIRECTOR, AIRLINE DIVISION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS; AND JOHN CLARKE, BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Ms. EGGE. My name is Lynne Egge and I am here on behalf of several members of the Joint Council of Flight Attendant Unions. The flight attendants for whom I am speaking today are represented by the Association of Professional Flight Attendants, the Independent Federation of Flight Attendants, the Independent Union of Flight Attendants, the International Brotherhood of Teamsters, Airline Division, and the Union of Flight Attendants.

I am very happy to be able to testify today on behalf of flight attendants because we are quite concerned about the issues of labor protective provisions in today's deregulated environment.

I believe that my fellow witnesses have and will continue to make an excellent case for the intentions of Congress in the deregulated atmosphere and for the Department of Transportation's clearly stated intentions, including its failure to recognize the difference between the domestic deregulated market and the international regulated market. Because of that, I will skip over and just include for the record a great deal of my written testimony.

I believe that the most beneficial thing that I can do for this subcommittee is to explain and clarify exactly what the LPP's are that we are talking about and how they affect the flight attendants who are involved on a very human basis by giving you stories of some of these flight attendants and the decisions that they are going to have to be making.

The flight attendants that I would like to introduce are going to be having to make some of the most significant career choices that a flight attendant will ever have to make. They are real people, but I have changed their names. I would like to begin by explaining, the most important single factor in a flight attendant's working life is seniority.

Seniority is a fact of life in most industries, but not to the degree that it affects those of us who are in the aviation industry. Seniority is something that is important to you, Madam Chairwoman, and every other Senator in this office. It affects committee assignments, the influence or clout that you have to benefit your constituents, and where your offices are located.

But the seniority system in the Senate is not as crucial to you and does not have as much effect on your roles as it does for those of us in the aviation industry. The distinguishing feature is that the aviation industry operates on a 24 hour a day, 365 day a year basis. The only people who work a normal schedule in the airline industry are management, the corresponding clerical positions, and those who work in downtown ticket offices. The rest of us work all year round.

Seniority is our sole governing factor in one's working schedule. A flight attendant's relative seniority controls whether they fly on weekdays or weekends, have holidays off or work over holidays, go to exotic, glamorous destinations or are relegated to puddle-jumpers, have more or less time off, have advance knowledge of schedules or are on a standby basis.

Moreover, our seniority determines where we are to be based, which determines where you life. It also affects whether or not you will have a job in the bad times or you will be one of those who are furloughed.

Those of you who serve in the Senate do control a great many of these influences in your working life. Seniority controls totally these influences for us.

Without LPP's that simply guarantee a fair and equitable seniority integration in mergers, flight attendants, the flight attendants who choose employment at United, are under a real risk that they will not be given any recognition for their years of service at Pan Am. Without LPP's, there is absolutely no incentive for the bargaining unit for the United Airlines flight attendants to negotiate or recognize the years of service completed by the flight attendants who will be coming over from Pan Am.

The second most important aspect of LPP's is that all the remaining and unresolved disputes are settled by binding arbitration. This is what provides the incentive for all parties to negotiate and settle their own problems. Without this mechanism for resolving disputes, there is no real incentive for the parties to bargain in good fath toward a fair and equitable agreement.

Several of the remaining LPP's that are generally included in the Mohawk-Allegheny are displacement allowances for employees moving to lower paid jobs, dismissal allowances for those who lose their jobs as a result of mergers, and moving allowances, including provisions for the sale or lease of homes.

These LPP's were designed to make sure that when the carriers benefit from a sale or a merger the employees are not hurt. Pan Am and United have sought to assure us that there will be no major hardships in these regards as a result of their merger. However, the LPP's simply would have made these assurances more than mere words.

The last protection that is generally part of LPP's is the adequate notice of work force rearrangements. Inevitably, there are complications in every merger. In the Pan Am-United deal, neither carrier has made any firm decision today regarding which bases will remain open or be closed or how many flight attendants will be required to operate flights out of those bases.

For the individual flight attendant, the resolution of these questions is really important and in large part depends upon the resolution of the seniority system.

Not all of the issues for flight atendants are unresolved in this transaction. United has described its plans regarding pensions, insurance programs, sick leave, and so forth. Nor would LPP's have answered all of the unresolved issues.

LPP's, for example, would not address the different work rules and standby and reserve systems at the two carriers. But if DOT had imposed LPP's in this particular case, the Pan Am flight attendants would have been guaranteed a fair and equitable resolution of the seniority questions, with all that implies for the flight attendants. LPP's would have guaranteed that they would not have to suffer unfairly while Pan Am and United both benefit from this transaction.

Now, I would like to introduce you to my real people. First here is Elizabeth. She is first because she is the most senior of my trio. Her flying career began basically in San Francisco, a base that for us is considered very senior. Over 50 percent of the flight attendants who work out of San Francisco have more than 20 years with Pan Am.

Elizabeth has been a flight attendant for 35 years. She is now in her mid to late fifties and is getting close to retirement. She is a purser, which means more money and, commensurate with that, more responsibility. In relative terms she is quite senior and has a great deal of control over her flying schedule.

She is very established in her community, is a home owner and very active in her community affairs, particularly in areas regarding substance abuse. Elizabeth is also the sole support of her mother, her infirm 80 year old mother.

The decision that she faces is difficult because of her strong sense of pride in the Pan Am China Clipper tradition, of which she has been a major part over the years. It is unthinkable also for her to have to start at the bottom of another carrier's seniority list.

She is not even sure if she could remain based in San Francisco. If she chooses to remain with Pan Am, she has been told that the size of the base will be drastically reduced and the kind of flying that she has been doing for close to 35 years is now totally unknown.

The most painful and unnerving part for Elizabeth is that she does not feel she has had any control or say in resolving these unknowns. The labor protective provisions would have at least allowed her union to participate in the process.

Our second flight attendant is Richard, who is Honolulu based. He has been with Pan Am for over 20 years, but he only has 13 years as a flight attendant because prior to 1972 men were discriminated against by the airlines, which refused to hire them in the job as flight attendants.

He has been in Honolulu for 10 years. He owns a home, has two young children ages 5 and 1, and his wife has her own very successful established career in our 50th state.

In relative terms, Richard, who is also a purser, is considered senior at Honolulu. This also allows him a great deal of control over his working schedule, which is important to him because he shares child care responsibilities with his wife. Having time to participate in his children's activities on a regular basis is of primary importance to Richard, and it is one of the reasons that he is and will continue to remain a flight attendant.

For Richard, the decision is difficult. Pan Am has given a clear indication that its Honolulu base will be closed when the transfer is completed. If he chooses to remain with Pan Am, he will have to move or commute, choices which would have a significant impact on his family.

If he chooses to go with United, he may begin the process of seniority accumulation for the third time. He would lose his job as a purser since there is no equivalent at United for this position. And even if seniority integration is achieved, he may not have enough seniority to remain at United's very senior Honolulu base. He too feels frustrated at being locked out of the process, the decisionmaking process.

Last, there is Ellen who is now based in Los Angeles. To me, Ellen's story is the most dramatic because hers is one of courage and strength. She has dealt with several obstacles in her flying career that most of us have not faced. Ellen is in her early 50's and she is what we call a returning mother.

Prior to 1972, when a woman reached a certain age or had children she was forced—they were forced to stop flying. At Pan Am, a pregnant flight attendant had to resign from the company. In effect, a woman was made to choose between career or children. Ellen chose marriage and children, and she had three.

After the laws changed in 1972, she was notified that she had the option of returning to work as a flight attendant and she did. She chose to do this because she was married to an abusive and alcoholic man. This was a chance for her to get out of that relationship, which was hurting herself and her children.

Being a flight attendant also meant the ability for her to provide financially for her children and continue with her work schedule that provided the flexibility so she could participate in their schedules and in their activities. When she returned to flying, her children were 12, 9, and 6. She was initially based in Washington and she and her children thrived in our Washington area community.

Her flying schedule was regular, five times a month to London, and these trips required that she be gone only 48 hours at a time. Ellen and her boys flourished until Pan Am closed its Washington base in October of 1980. Ellen had the choice of moving or commuting.

She chose to move to the Houston base, where her relative seniority was still good, as it was in Washington, and the cost of living was less, so she would be able to continue providing a good standard of living for her children. The flying out of Houston was also similar and did not require long trips, so she was available to be near her children on a regular and reasonable schedule.

In March of 1985, the Houston base closed. This time, another choice, commute or move. She chose to commute. Her children are now older and are more self-sufficient, and she has always wanted to see the Pacific. She transfers to Los Angeles.

Within 60 days of transferring to Los Angeles, the news of the Pan Am sale of the Pacific division broke. She is devastated once again because she is being forced to make a decision that is brought about by others and she has no control over that.

If she chooses—her situation now is this. If she chooses to remain at Pan Am, there is an uncertainty as to what will happen at the Los Angeles base. The focus of the new Pan Am is now Europe. The flying that will probably be done from Los Angeles is very likely not to be conducive to commuting. That means that she may have to move.

But at all of Pan Am's remaining bases, the cost of living is much higher than it is in Houston. If, however, she chooses to go with United, she may be doing so with no seniority at all and no idea of where she would be based. The question that Ellen keeps asking is: Why are they making me start all over again? When do I get some relative stability in my career choice?

To be fair, the arrival of 1,202 Pan Am flight attendants into the United ranks will cause some disruptions and force some changes for those who are already at United. But to us they do not begin to measure up to the lifestyle and career changes that the Pan Am flight attendants are being required to make.

Madam Chairwoman and committee members, we believe that when Congress decided to deregulate the airline industry, you made a commitment to the employees of that industry to consider their welfare. We further believe that that commitment has been reinforced on many occasions whenever the Airline Deregulation Act of 1978 has been considered. We the employees made a commitment to the Congress, which was to make deregulation work.

We believe we have done this. We have tried to do this even when doing so has required significant hardships and sacrifices from us. We are asking that you honor your commitment and make the changes necessary in the laws to ensure that this type of situation that happened at Pan Am does not happen again.

Thank you for your attention, and I am available for questions.

[The statement follows:]

STATEMENT OF LYNNE EGGE ON BEHALF OF THE JOINT COUNCIL OF FLIGHT ATTENDANT UNIONS

Good morning Ladies and Gentlemen. My name is Lynne Egge, and I am here on behalf of several members of the Joint Council of Flight Attendant Unions. The members of the Joint Council of Flight Attendant Unions for whom I am speaking today are as follows: The Association of Professional Flight Attendants; the Independent Federation of Flight Attendants; the Independent Union of Flight Attendants; The International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, Airline Division; and the Union of Flight Attendants. The purpose of the Joint Council is to promote Flight Attendants' interests here in Washington.

Today's Flight Attendant is career oriented, with an average seniority of between 13 and 17 years, especially among employees of the major carriers. The average age of a Flight Attendant is now in the early to mid 30's. Because Flight Attendants are "sticking around longer," we are intensely interested in the aviation industry and today's deregulated environment. We are particularly interested in the issue of labor protective provisions, which were traditionally imposed in airline mergers, acquisitions, route transfers and other transactions. As you know, those sorts of transactions are now occurring at a significant rate in the aviation industry.

I am very happy to be able to testify today because we firmly believe that a strong case can be made that Congress did not intend to abolish labor protective provisions when it deregulated the airline industry in 1978. In passing the Deregulation Act of 1978, Congress recognized that the reasons for the imposition of labor protective provisions would not change drastically after deregulation. We further believe that Congress continues to recognize that these reasons have not changed. Regrettably, the Department of Transportation either does not share or has chosen to ignore Congress' concerns. The DOT's intentions with regard to Section 408 mergers and acquisitions and the imposition of labor protective provisions are now patently clear. A brief history is in order.

The Civil Aeronautics Board first imposed labor protective provisions as a matter of public policy in 1950 in the *United-Western* acquisition, described and justified them in detail in the *United-Capitol* merger case in 1961, and ultimately modified them into the standard *Allegheny-Mohawk* provisions in 1972. Since that time, the CAB consistently imposed these standard LPP's in airline mergers, acquisition, and certain other transactions. The CAB continued in actual practice to impose LPP's even after the enactment of the Aviation Deregulation Act.

It is clear to us, upon reviewing the legislative history of deregulation, that from the beginning Congress recognized the benefits of and the need for labor protective provisions. In Senate Report No. 95-631, 85th Cong., 2d Sess. 114 (1978), the Senate Committee on Commerce, Science and Transportation expressed a special concern about the potential adverse affects of deregulation on airline employees:

"[T]he Congress, on behalf of the American people, must insure that the benefits to the public which result from its decision to alter substantially the regulation of air transportation are not paid by a minority—the airline employees and their families who have relied on the present system."

And in 1978, the House Aviation Subcommittee reported out a bill which, for the first time, expressly recognized the interests of industry employees as part of the "public interest" that the CAB was directed to promote; Congress thus required that the CAB "encourage fair wages and equitable working conditions." This expressed concern for aviation industry employees was enacted into law as part of the Aviation Deregulation Act of 1978. 49 U.S.C. § 1302(a)(3).

Twice since the enactment of the Airline Deregulation Act, Congress has revisited the issue of labor protective provisions. Each time Congress reaffirmed its intent that the pre-1978 labor protective policies of the CAB be continued. The first occasion was in 1982, when Congress enacted legislation to extend the Aviation Insurance Program. In the course of that legislation, Congress further amended the Federal Aviation Act of 1958 to retain the CAB's jurisdiction over domestic mergers until 1985. Senator Kassebaum, the sponsor of the amendment, explained on the Senate floor: "The Board's labor protective provisions have been an integral part of the consolidation process. . . . The airline industry labor force has been severely affected by the recession and the PATCO walk-out and subsequent constraints on the system. In order to minimize further disruptions to the workforce *we request that the CAB continue to impose these standard labor protective provisions in a manner consistent with its handling of Section 408 transactions prior to the enactment of the Airline Deregulation Act of 1978.*" 128 Cong. Rec. S1236 (June 21, 1982) (emphasis added). The Conference Report on the Aviation Insurance Program confirmed that this statement of Senator Kassebaum was a true reflection of the intent of Congress. H.R. Rep. No. 97-684, 97th Cong., 2d Sess. 4 (1982).

Congress expressed the same concern in 1984 when it enacted the Civil Aeronautics Board Sunset Act, by which the DOT was granted authority over the remaining functions of the Civil Aeronautics Board. The House Committee on Public Works and Transportation confirmed in unequivocal terms that the standard *Allegheny-Mohawk* labor protective provisions should remain a functioning part of the DOT's regulatory arsenal. I quote: "In administering Section 408 of the Act the CAB has imposed labor protective provisions, known as the Allegheny-Mohawk conditions, as a condition to its approval of many mergers and other Section 408 transactions. These conditions have been imposed in all recent mergers of carriers operating large (more than 60 seats) aircraft. *The Committee expects that DOT will continue to impose labor protective conditions and to consider the interests of industry employees when evaluating the public interest* under Section 102(a)(3)." This is from H.R. Rep. No. 98-793, 98th Cong., 2d Sess. 11 (1984).

Since assuming authority over Section 408 transactions, including the authority to impose LPP's, the Department of Transportation has made it exceedingly clear that it simply does not intend to impose labor protective provisions. The Department contends that LPP's are not consistent with its view of deregulation. And it continues to ignore Congress's clearly stated view. In June 1985, the Department announced that "except where the acquiring carrier acquiesces, LPP's should be imposed only where necessary to prevent strife that would disrupt the nation's air transportation system." DOT adopted this position in the *Southwest/Muse Air* case, and in the *Midway-Air Florida* case. Both of these cases involved small mergers that did not affect large numbers of employees and also presented some extenuating circumstances.

The case which everyone has been watching, and which most parties felt would be the case which would meet DOT's "new standard" was the *Pan American-United* transaction. As you know, United will pay Pan Am $750 million to buy Pan Am's entire Pacific Division. On October 31, 1985, the Department of Transportation issued its final order in that case, approving the sale. Significantly, the DOT ruled that even in a transaction of this magnitude, its new standard for the imposition of LPP's had not been met. Unless something is done to change the Department of Transportation's declared intentions, the Pan Am/United decision certainly signals the end of labor protective provisions to protect employee interests in significant airline transactions.

No one can doubt that, if DOT had applied the pre-deregulation standard for imposing labor protective provisions—the standard that Congress has expressly said the DOT should apply—labor protective provisions would have been imposed in the Pan Am/United case. Pan Am and United had each been involved in major transactions before deregualtion. In every case, the CAB imposed labor protective provisions on them. Indeed, as the House Committee on Public Works and Transportation explained in 1984: "[t]hese conditions have been imposed in all recnet mergers of carriers operating large (more than 60 seats) aircraft." Certainly, that description includes Pan Am and United.

Many labor organizations had hoped that even under its new standard, the DOT would impose labor protective provisions in the Pan Am/United transaction. After all, Pan Am and United are truly large carriers—the largest U.S.-flag carrier and the largest U.S. airline. And the routes involved were international routes, where the free entry and expansion that is now possible in domestic markets after deregulation cannot take place. Thus, any labor unrest on an international carrier would not allow other carriers to pick up the slack, by opening new routes or expanding existing service. The Department of Transportation, however, summarily rejected these arguments. At this point, we simply cannot imagine any airline transaction that the DOT would consider to meet its new standard for imposing labor protective provisions.

For further evidence of the DOT's intentions, I would like to submit for the record responses from the Assistant Secretary for Policy and International Affairs Scocozza to the Honorable Frank Wolf in the House of Representatives and to the Honorable Mark Hatfield in the Senate. These letters are in response to constituent requests to both of those offices. They make very clear DOT's intentions, and I would like to quote: "The Department has to date followed the [post-deregulation] position of the CAB that LPP's should be imposed only when they are necessary to prevent labor strife that would disrupt the nation's air transportation system." By now, it is should be clear to all, except the most obtuse, that as far as the Department of Transportation is concerned, LPPs will never be applied in any airline merger or acquisition.

Perhaps the most beneficial thing that I can do for this Subcommittee is to explain and clarify exactly what the LPP's are that we are talking about and how not having them will affect employees. As you may know, as part of its purchase of Pan Am's Pacific Division, United has promised to hire 1,202 Pan Am Flight Attendants. All of Pan Am's Flight Attendants are therefore facing the choice whether or not they wish to transfer to United. Let me "introduce" you to three Flight Attendants, one from each of our bases that will be most affected by this deal. These Flight Attendants now have to make one of the most significant career choices that any Flight Attendant will ever have to make. And because of the failure of the DOT to implement LPP's, this choice will have to be made in partial darkness, that is, made before many crucial questions are answered or issues resolved.

The first and most important single factor in a Flight Attendant's working life is seniority. Seniority is a fact of life in most industries, but not to the degree that it affects those who work for an airline. Seniority is something that is important to each of you on this Subcommittee, Madame Chairwoman, and to every other Senator; it affects your committee assignments, the amount of influence or clout that you have to benefit your constituents, and where your offices are located. But the seniority system in the Senate is not as crucial to you and does not have as much affect on your roles as it does for those of us in the aviation industry. The distinguishing feature is that the aviation industry, like other transportation industries, operates on a 24 hour day, 365 day a year basis. The only people who work a "normal schedule" of 9 to 5, Monday through Friday, are those in management and corresponding clerical positions or those who work in downtown ticket offices.

Seniority to a Flight Attendant is the sole governing factor controlling one's working schedule. Flight Attendants' relative seniority controls whether they fly during the week or on weekends, have holidays off or fly over holidays, go to exotic, glamorous destinations or are relegated to operating "puddle-jumpers," have more or less time off, have advance knowledge of their schedules or spend most of their time on a reserve or "stand by" basis. Moreover, seniority determines where they are likely to be based—which affects where they live, and whether or not there will be a job for them during "bad" times when employees are furloughed. Those of you who serve in the Senate control these kinds of influences on your working life; seniority controls it for those of us who fly. Without the LPP's that would guarantee a fair and equitable seniority intergration for those Flight Attendants who choose employment with United, the risk is quite real that they will not be given any recognition for their years of service at Pan Am. Without LPP's, there is absolutely no incentive for the bargaining unit of the United Airlines' Flight Attendants to negotiate or recognize the years of service completed by any of the Flight Attendants who choose to seek employment at United.

The second most important aspect of LPP's is that all remaining and unresolved disputes are settled by binding arbitration. This is what provides the incentive for all parties to negotiate and settle their own problems. Without this mechanism for resolving disputes, there is no real incentive for parties to bargain in good faith toward a fair and equitable agreement.

Several of the remaining LPP's are as follows: displacement allowances for employees moving to lower paid jobs, dismissal allowances for those who lose their jobs as a result of a merger, and moving allowances, including provisions regarding the lease of sale of homes. These LPP's were designed to make sure that when the carriers benefit from a sale or merger, employees are not hurt. Pan Am and United have sought to assure us that there will be no major hardships on any employees as a result of their merger. LPP's, of course, would have made those assurances more than mere words.

The last protection that is generally a part of LPP's is adequate notice of workforce rearrangements. Inevitably, there are some complications in every merger. In the Pan Am-United deal, for example, neither carrier has made any firm decision regarding which bases will remain open or be closed, or how many Flight Attendants will be required to serve the flights from those bases. For the individual Flight Attendant, the resolution of these questions is very important, and in large part depends on the resolution of the seniority integration issue.

I believe that I have described most of the unanswered questions that are making this career choice a difficult decision for those Flight Attendants who are now at Pan Am. Of course, not all issues are unresolved for Flight Attendants who are considering going to United; United has described its plans regarding pensions, insurance, sick leave, etc. Nor would LPP's resolve all of the questions that remain unanswered. LPP's would not, for example, address the different work rules and stand-by and reserve systems at Pan Am and United. But if the DOT had imposed LPP's, the Pan Am Flight Attendants would have been guaranteed a fair and equitable resolution of seniority questions, with all that that implies for Flight Attendants. And LPP's would have guaranteed that they would not suffer unfairly while Pan Am and United both benefit from this transaction.

Now, let me "introduce" you to our Flight Attendants and attempt to describe how the present Pan Am/United merger is going to affect each of them. These are real people, but I have changed their names. Their stories are not unique. The situation that each one faces is similar to one any Flight Attendant at any carrier would confront if it was his or her carrier that was involved in a merger or acquisition of this magnitude.

First, there is Elizabeth, and she is first because she is the most senior of my trio. For most of her flying career, Elizabeth has been based in San Francisco (SFO), a base that is considered very senior. Over fifty percent of the Flight Attendants who fly out of SFO have more than twenty years with the company. Elizabeth has been a Flight Attendant for 35 years. She is in her mid to late fifties and is getting close to retirement. She is a purser, which means more money and, commensurate with that, more responsibility. In relative terms she is quite senior and has a great deal of control over her flying schedule. She is established in her community, is a home owner and is very active in community affairs, particularly in areas relating to substance abuse problems. She serves as a counselor for many organizations including I.U.F.A., her own union. Elizabeth is also the sole support for her infirm 80-year-old mother, who lives with her. The decision that she is going to have to make a particularly difficult for her because of her strong sense of pride in the "China Clipper" tradition, a tradition in which she has long been a part. It is also unthinkable to her to have to start at the bottom of another carrier's seniority list, especially at this time in her life. She is not even sure that she will be able to remain based in SFO. If she chooses to remain with Pan Am, she has been told that the size of her base will be drastically reduced; the kind of flying to be done is also totally unknown. The most painful and unnerving part of all of this for Elizabeth is that she does not feel that she has had any say or control in resolving the unknowns. Labor protective provisions would at least have allowed her union to participate in the decision making process.

Our second Flight Attendant is Richard, who is based in Honolulu (HNL). Richard has been with Pan Am for over 20 years, but only has 13 years as a Flight Attendant. The reason for this is that prior to 1972, men were being discriminated against by airlines that refused to hire them as Flight Attendants. He has been in HNL for over 10 years. He owns a home, has two young children, ages 5 and 1, and his wife has her own successful career well established in our fiftieth state. In relative terms, Richard, who is a purser, is considered senior, as HNL is not a senior base for Pan Am. This allows him a great deal of control over his working schedule. This is very important to him because he shares child care responsibilities with his wife. Having the time to participate in his children's activities on a regular basis is of primary importance to Richard, and it is one of the reasons that he is and will continue to be a Flight Attendant. For Richard, the decision to be made is difficult. Pan Am has given clear indication that it HNL base will be closed when the transfer of the Pacific flying is completed. If he chooses to stay with Pan Am, he will have to move or commute—choices which would have a significant impact on his family. If he chooses to go with United, he may have to begin the process of seniority accumulation for the third time. He would lose his job as purser, since there is no equivalent position at United. And even if there is an integrated seniority achieved, he may not have the seniority to remain in HNL. For United, the Honolulu base is one of the most senior in their system. The choices for Richard are not easy and he, too, feels the frustration of being locked out of the process.

Last, there is Ellen who is now based in Los Angeles (LAX). Ellen's story is the most dramatic because hers is one of courage and strength. She has dealt with obstacles to maintain her career that most of us have not faced. Ellen is in her early fifties and is what we call a returning mother. Prior to 1972, when a woman reached a certain age, got married or had children, she was forced to stop flying. At Pan Am, a pregnant Flight Attendant had to resign from the company; in effect, a woman had to make a choice between career and children. Ellen chose marriage and children, and she had three. After the laws changed in 1972, Ellen was notified that she had the option of returning to work as a Flight Attendant, and she did. She chose to do this because she was married to an abusive and alcoholic man. This was a chance to get out of that bad relationship which was hurting her children and herself. Being a Flight Attendant again meant not only the ability for her to provide financially for her children, but also that she would have some flexibility in her schedule and she could continue to be involved in their lives and in their activities. When she returned to flying, her children were 12, 9, and 6. She was initially based in Washington, DC and moved to Reston where she bought a small townhouse. She and her children became very involved in their school and community activities. Her flying schedule was regular—five times a month to London—and these trips only required that she be gone from home 48 hours at a time. Ellen and her boys flourished until October 1980, Pan Am than closed the Washington base. The choice was to disrupt her family and move or to commute and have a very irregular schedule. Ellen chose to move and went to Houston where her relative seniority was quite good and she was able to continue to afford an adequate lifestyle for herself and her children. The flying out of Houston was also similar to that in Washington. In March 1985, the Houston base closed. This time she chose to commute. Her children were older and more self-sufficient. It was now time for "Mom" to do something for herself and go see a part of the world she had always wanted to explore, the Pacific. Ellen transferred to Los Angeles where again, her seniority of 15 years was considered good for a Flight Attendant. Within 60 days of transferring, the news of the sale of Pan Am's Pacific Division to United broke. Ellen was devastated because once again, a decision made by others was controlling her life and forcing her to make choices that will almost certainly cause disruption for her and her family. For Ellen, if she chooses to remain at Pan Am there is the uncertainty as to what will happen at the LAX. The focus of the "new Pan Am" is now Europe. The flying that will probably be done from LAX will not be conducive to commuting. It may require that she move, but in all the remaining Pan Am bases, the cost of living is much higher than Houston. If, however, she chooses to go with United, she may be doing so with no seniority and with no idea at all of where she would be based. The question that Ellen keeps asking is: "Why are they making me start all over again? When do I get some relative stability in my career choice?"

The date on which this merger is to take place is on January 4, 1986, or 5 days after President Reagan gives notice that he will not disapprove of the DOT's merger order. It is our view that the issue of seniority integration would have resolved in a timely manner had LPP's been a part of the merger order. We do not foresee that as being the situation now.

To be fair, the arrival of an 1,202 Pan Am Flight Attendants into the United ranks cause some disruptions and force some changes for those who are already at United. But these do not begin to measure up to the significant life style and career changes that the Pan Am Flight Attendants are being required to make in partial darkness.

Madame Chairwoman and subcommittee members, we believe that when the Congress decided to deregulate the airline industry, you made a commitment to the employees of that industry. And we further believe that you have reinforced that commitment whenever the Airline Deregulation Act of 1978 has been considered. We, the airline employees also made a commitment to the Congress, which was to make deregulation work. We believe that we have tried to do that, even though doing so has required many significant hardships and sacrifices from us. We are asking that you honor your commitment and make the changes necessary in the laws to insure that this situation does not happen again. It is within your power and purview to do so.

Thank you for your attention. I will be happy to answer any questions.

Senator KASSEBAUM. Thank you, Ms. Egge.

Mr. Genoese?

Mr. GENOESE. Thank you, Senator.

I would like to bring regards from my wife. She met you several times at Girls' Nation, and we discussed you last night for 1 hour, and you came out very, very favorable.

Senator KASSEBAUM. I am sorry she is not here testifying.

Mr. GENOESE. I promise I will not ask for equal time. I will make my remarks as brief as I possibly can.

I submitted a typewritten report to you, and I will give you the highlights of that particular report, on behalf of Jackie Presser, who is our general president of the International Brotherhood of Teamsters, that represents over 2 million members and 500,000 to 600,000 retirees, and we have an Airline Division that represents an awful lot of people. And I sat here today and I listened to the Assistant Secretary of the Department of Transportation and I listened to the gentleman from the ATA, and I watched people continually turn and change and change positions all the time because they say things change.

But people do not change. On behalf of the people of the airline industry, the organized and the unorganized, I am looking for protection for them because we are talking about jobs which are the important thing. One of the things that the ATA man brought out, he said that the unions are able to sit down and work out their particular problems. That is not completely so in all particular cases. If you talk about the TWA, you have a lot of unorganized people there, anywhere between 5,000 to 8,000 people, and no one speaks for them whatsoever. And Pan American World Airways, when they said they are sitting down with the unions in order to work out their particular problem, they have not sat down with us. We are the only ones on the property with an open contract, and they turn around and they say well, come on and sit down and talk. I said, what about the merger which is taking place, your selling off the particular routes? And they turned around and said no, we want to talk about negotiation and if you do not come in, we are going to sell off the Atlantic, and if you do not come in, we are going to lay more people off, and if you do not do this, we are going to do a lot of other things in order to affect you.

Well, I said we need some labor protective provision on behalf of the people. How do we get it? We turn around and they say to the Congressman or the Senator or the Government, the company says come in and negotiate, and we go in and negotiate. They are bringing the National Mediation Board in. The National Mediation Board comes in for a particular subject. And they turn around and say hey, you had better really shape up like the other unions on the property and fold, and I said we cannot do that. You turned around and you negotiated with United to sell, off the routes, and in the meantime you are negotiating with the pilots, the flight engineers and the flight attendants. You never bring it out in front that you might have—are being faced with the sale of the Pacific, and now they have got a tied up contract, and having a tied up contract, they have no leverage whatsoever. It is all gone. We are the only ones with any leverage whatsoever.

And it seems that any time that you sit down with any company, that if you are polite, they take it for a sign of weakness. When you turn around and you say you are nice, they take it for a sign of weakness. And what we really wanted to do is put it into effect to come across as strong as we possibly can. The National Mediation Board turns around, the company turns around and says you are unreasonable, you are hard, you are tough, and we are trying to represent our people.

Since the Pan American-National merger went together, when we had 8,000 or 8,800 people on the payroll, it went down to 4,800 people. They are no longer there anymore. They are gone, opening and closing stations.

So I made a complete circuit coming back here talking today. You say, well, why? We asked for labor protective provisions before. We talked about opening and closing stations. The ground people, the mechanics, the ramp servicers, the ticket takers, the reservations, the service people are being hurt more than anybody else going? Why? Because they closed their stations without warning whatsoever, and a lot of them have no rights. There are 60,000 people in the airline business, nonorganized, which we are trying to organize today. We have an active campaign continuously on behalf of these people so somebody can speak for them in some type of fashion whatsoever.

And what happens here, when labor protective provisions which were there under the CAB and they came into the Pan America, it did not cost Pan American any money at all. Then when the United situation came in, which I differ when they said that Ferris said that if there are labor protective provisions, we will not go along. He reversed that particular position. He turned around and said I want to take a look at the situation. And APCA turned around and said absolutely not.

And I see them all make that particular statement in any mergers that take place, but eventually if there are labor protective provisions, the mergers go forth in that particular way. But to add insult to injury with the Pan American, they said we will take 400 some odd pilots, we will turn around and take 1,200 some odd flight attendants, but we do not want to take anybody from the ground. And if they take anybody from the ground and you are hurt in any particular way, we will not hire you for 2 years. And then have you just go out the door.

So then when we take a hard position, somebody says through the collective bargaining procedure, then they turn around and we upset the apple cart by hurting service. Then somebody says, well, you are really not hurting service. Well, you cannot have the labor protective provisions unless you are hurting. And how do we hurt it? How do we strike? One airline is down, does it really hurt service in America? If two lines are down, does it really hurt people in America? The answer is no, absolutely not. But individuals get hurt.

I watch individuals after individuals in the airline industry hurt continuously, and we sit down with a company, and they say use your muscle, and then they turn around and say why do you not go see your legislators and get something passed down there, go see them and explain your particular story.

So I finally, after I went to speak to my Congressman, I speak to my Senator, I speak to the National Mediation Board, I speak to companies in good reason of taking care of you because when they are in trouble, we were right there in order to help them and try to work together. But it is always a one-way street.

A case in point, Pan American World Airways, we happen to have a man by the name of Raymond Grebey. He is one of the greatest guys in the world. He worked for General Electric. When he came from General Electric, he went over to the baseball, and you know what happened there, they had a strike, and over here in Pan American World Airways he was, of course, on the strike of the TWU because he took the hard line.

Now what happens with us, threatening us continuously that we are going to sell off most of the other airlines, and we have no protection unless we strike them, take in a harsh way, and a lot of people will be hurt. The flight attendants will be hurt, the pilots will be hurt, the ground people will be hurt because we have got to take them out and get that full support.

The thing is this, is that the balance has to be put back in some shape or form of taking care of the first thing I said, human beings with jobs, and protecting those jobs and understanding the restructuring, the airline industry, and they went down again, and they are not taking care of the people. They are restructuring people and taking care of them because they have to be taken care of in some shape or form.

What we really want is some labor protective provisions. Now, you asked Captain Duffy, who I respect tremendously, saying is there anyone different than the one that is out t here now as far as labor protective provision? There is always a change in the particular situation. Certain things need to be protected, like the young lady turned around and said about her seniority, how to protect it. It is the dearest thing in the world, and just a stroke of the pen and it is all gone. That is not fair whatsoever.

Now, you turn around and you say moving, very little moving. Then you asked the question before about the ATA man and say how much they really spend and what kind of cost. If he had the answer, he would give it to you. I think there is no cost whatsoever in all of the history which has taken place, and they only use that to the extent as a tremendous cost, but nobody comes up with any figures whatsoever.

We are trying to say that the older flight attendants, what they are trying to get rid of, either buy out or get rid of them, because evidently the rose is not as beautiful as it was last year, but a rose is a rose by any other name with the flight attendants. And they turn around as far as the mechanics, they hit the age where, you know, they are too young to die and too old to work for a company, well, they try to weed those out.

So when we look back at it and look at it very, very carefully, understanding Wall Street, understanding business, understanding the airline industry, but most important, the unions understand people, and we appeal to you very strongly on behalf of the Teamsters organization and our General President that you do everything in your power to give labor protective provisions in some form whatsoever before there is some kind of a strike, either nationwide or worldwide or whatever it may be, whatever we have to do to get the attention.

And thank you for letting me present my remarks.

[The statement follows:]

STATEMENT OF JACKIE PRESSER, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

INTRODUCTION

The International Brotherhood of Teamsters welcomes this opportunity to express its support for a Congressional mandate that certain Labor Protective Provisions be imposed in various inter-carrier transactions such as mergers, acquisitions, consolidations and route transfers. The public interest, airline industry employees and carriers need the stability provided by protective provisions to safeguard the free flow of commerce.

The Teamsters Union, with its two (2) million members, is the largest union in the Free World. The Teamsters Airline Division is one of the larger unions in the air transportation industry. Our members are employed in all phases of the industry: certified carriers (scheduled and supplemental), air taxi and commuter carriers and intra-state carriers. We represent the various crafts and classes in the industry: pilots and other flight deck personnel, flight attendants, mechanics and related, stock and stores, clerical, office, flight and passenger service, dispatchers and communications. We hold the distinction of being the only labor organization to represent workers employed in all phases of air transportation and in all its bargaining crafts and classes.

In 1979, the Teamsters Union was involved in the Pan American/National Airlines Merger—the largest merger in the history of the airline industry. This experience confirmed our prior belief that labor protective provisions are necessary to establish a procedural mechanism for the efficient combining of the workforces of merging carriers. The labor protective provisions appended to the Pan American/National Merger Agreement gave the parties standards for resolving, through negotiations and/or arbitration, such highly emotional issues as the integration of the seniority list. The benefits to the traveling public, the carrier, and the employees involved in that precedent setting merger requires us now to support a Congressional mandate for labor protective provisions in other inter-carrier transactions.

Further need for labor protective provisions is highlighted by the recent *Pacific Division Transfer* case, DOT Docket 43065 (Final Opinion and Order, Oct. 31, 1985), involving an acquisition of assets and a transfer of route authority by Pan American to United Airlines. This route transfer case is the largest in airline history. Unfortunately, the Department of Transportation concluded that labor protective provisions were not warranted, even though the facts indicate that United will not offer ground employees represented by the Teamsters Airline Division and the Transport Workers Union employment as part of the transportation. The evidence further reveals that the route transfer could result in massive furloughs and job loss among domestic ground personnel. Notwithstanding this evidence, the Department of Transportation reasoned that its proper role in private-sector labor matters in the air transportation industry was to impose protective provisions only to prevent a disruption of the national air transportation system.

I. Labor protective provisions establish a procedural mechanism for resolving disputes

The underlying theory of federal labor policy in the railroad and airline industries is to insure to the public continuity and efficiency of interstate transportation service, *Union Pac. R.R.* v. *Price,* 360 U.S. 601, 609 (1959). To accomplish this goal the statutory scheme of the governing labor laws were designed to protect against interruptions to the flow of commerce due to the failure of carriers and their employees to settle peaceably their disputes.

With this policy in mind, the Civil Aeronautics Board and other Federal agencies regulating commerce have conditioned their approval of inter-carrier transactions, such as mergers, acquisitions and route transfers, on the adoption of labor protective provisions. These protective conditions provide for the negotiation and/or mandatory arbitration of seniority list integration, and offer certain minimum payments to employees who lost their jobs or are otherwise adversely affected by the transaction.

As this subcommittee is aware, seniority is critical in work assignments, layoffs and recall, as well as most other competitive working conditions in the airline industry. Consequently, seniority lists integration is an important element in successfully implementing a decision to bring together the workforces of merging carriers. If not for orderly mandatory procedures, like those contained in the *Allegheny-Mohawk* labor protective provisions, efforts to integrate seniority lists and resolve the related disputes would likely result in labor unrest.

Critics of labor protective provisions have maintained that they constitute an intrusion into the collective bargaining process. However, a review of the *Allegheny-Mohawk* provisions indicate that they contemplate and encourage collective bargaining. Section 3 of the standard provisions state, in pertinent part: "Insofar as the acquisition affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority list in a fair and equitable manner, including, *where applicable, agreement through collective bargaining between the carriers and representatives of the employees affected* [emphasis added]." This section of the protective provisions also provides for binding arbitration, if the parties fail to agree.

Also, critics of the protective provisions contend that these provisions are to expensive. However, before an employee can obtain a dislocation allowance, he/she must prove that his/her dislocation was caused by the air transaction. This burden of proof creates an equitable means of protecting the carrier against nonmeritorious claims, while assuring that employees negatively impacted by the air transaction are not left unprotected.

The imposition of protective provisions merely recognizes the fact that some intercarrier transactions require a faster dispute resolving mechanism than that provided by the Railway Labor Act. Lengthy delays during which the operations of the merging carriers cannot be integrated would likely have an adverse impact on the financial status of the surviving carrier.

In the absence of labor protective provisions, the parties must resort to the time consuming negotiation and mediation requirements of the Railway Labor Act. While the mandatory procedures of the RLA are being exhausted, the carrier cannot gain the intended financial benefit of the air transaction. It is not uncommon for parties to take some one to two years to reach agreement under these RLA procedures.

II. The enactment of the Airline Deregulation Act strengthened the authority to impose labor protective provisions

The Airline Deregulation Act of 1978 strengthened the Civil Aeronautics Board's authority to impose labor protective provisions by specifically including employee welfare among the "public interest criteria" set forth in the Act. Section 102(a)(3) of the Deregulation Act, 49 U.S.C. § 1302(a)(3), advises the CAB that it should consider the need to encourage fair wages and equitable working conditions in exercising its powers and duties under the Act.

Neither the Deregulation Act nor its legislative history contains any indication that Congress intended to change the CAB's established policy of conditioning its approval of airline mergers and other air transactions on the acceptance of labor protection. The purpose of the Act was to deregulate specified aspects of the air transportation industry. It was not intended, however, to strip employees of essential protections, or to allow preventable labor strife to disrupt air transportation.

Two recent Congressional statements lend support to the conclusion that Congress did not intend to depart from the established policy of imposing LPPs in airline transactions. When Congress enacted legislation in 1982 to maintain the CAB's Section 408 jurisdiction until Sunset, P.L. 97-309, 96 Stat. 1453 (1982), Senator Kassenbaum stated: "[W]e request that the CAB continue to impose these standard labor protective provisions in a manner consistent with its handling of Section 408 transactions prior to the enactment of the Airline Deregulation Act of 1978." 128 Cong. Rec. 57236 (daily ed., June 21, 1982). Also, the House report on the Civil Aeronautics Board Sunset of 1984, P.L. 98-443, 98 Stat. 1703 (1984), stated: "In administering Section 408 . . . the CAB has imposed labor protective provisions . . . as a condition to its approval of many mergers and other Section 408 transactions. These conditions have been imposed in all recent mergers of carriers operating large (more than 60 seats) aircraft. *The Committee expects the DOT will continue to impose labor protective conditions and to consider the interest of industry employees when evaluating the public interest under Section 102(a)(3).*" H.R. Rep. No. 98-793, 98 Ph. Cong., 2d Sess., reprinted in 1984 U.S. Code Congressional Administrative News, No. 9, 2855, 2857 (emphasis added).

In sum, neither the Airline Deregulation Act nor its legislative history contain any directives that the former CAB, or the DOT, should no longer impose the standard labor protective provisions. Rather, the Deregulation Act contains two independent indications—the additional public interest standard and the employee protective provisions—of Congressional approval of the well established policy of imposing LPPs. Moreover, the legislative history of the Deregulation Act, as well as subsequent Congressional statements, suggest that Congress was well aware of the practice of the CAB and expected the DOT to adhere to this established labor protective policy.

III. Congressional action is necessary because the DOT refuses to adhere to the established labor protective policy

In each of the ten major airline mergers approved by the CAB following passage of the Deregulation Act, the Board reaffirmed its policy of conditioning approval of the merger on the parties' imposition of the *Allegheny-Mohawk* protective provisions. The adherence to its LPP policy in a deregulated environment shows that the CAB recognized that neither the Deregulation Act nor its legislative history prevented the continued use of protective conditions in airline transactions.

Since Sunset, the DOT, however, has consistently refused to continue the CAB's well-established LPP policy. The degree of DOT's departure from the historical concern for protecting employees adversely impacted by an airline transaction is best exemplified by the agency's recent decision in the *Pacific Division Transfer* case, DOT Docket No. 43065 (Final Opinion and Order, Oct. 31, 1985).

In *Pacific*, Pan American and United Airline's filed a joint application for DOT approval of the largest route transfer in airline history, pursuant to which Pan Am's Pacific Division would be sold to United. Evidence presented at the DOT conducted hearing indicated that United would only offer employment to some of Pan Am's flight personnel impacted by the route transfer. However, none of Pan Am's ground personnel within the United States—including office clerical, passenger and fleet service employees, mechanics and related employees, and stock clerks—will be offered employment by United.

The Pan Am/United transfer agreement specifically provides that: "For a period of twenty-four (24) months following the Closing Date, Buyer shall not without the consent of Seller employ any employee of Seller who was furloughed, terminated, retired or bought out by Seller following the Closing Date and who received severance, vacation or similar benefits from Seller in connection with such furlough, termination, retirement or buy-out." Literally, the Pan Am/United agreement could result in job loss for thousands of Pan Am employees who work for, or in support of, Pan Am's Pacific Division.

LPP critics will quickly argue that the rights of Pan Am employees can be protected through the collective bargaining process. At Pan Am, the pilots, flight attendants and Transport Workers Union represented ground employees have recently completed negotiations over new or amended labor agreements. However, the route transaction was not addressed in those negotiations because Pan Am did not disclose its plans for the transfer to the employee representatives. According to evidence presented by Pan Am at the DOT hearing, disclosure of the sale would "have [had] dramatic impact on on-going labor negotiations. . . ."

The Teamsters Airline Division, the representative of Pan Am's clerical and related employees, has not had the opportunity to address the route transfer in collective bargaining. The Teamsters' contract was negotiated during the regulatory era and does not contain provisions to deal with the reasonably anticipated effects of this unprecedented route transfer. Therefore, collective bargaining is not an adequate means of protecting impacted employees.

The labor parties, consequently, requested that DOT condition approval of the route transfer on the imposition of standard LPPs to assure equitable treatment for Pacific Division employees and fast resolution of any labor issues. United and Pan Am opposed the protective provisions. Admittedly, neither carrier studied the impact or the anticipated costs of the imposition of LPPs.

Referring to her orders in *Southwest Airlines-Muse* acquisition, Order 85-6-79 (1985) and *Midway-Air Florida* acquisition, Order 85-6-33 (1985), DOT Secretary Elizabeth H. Dole states in her *Pacific Division Transfer* decision that "the Deregulation Act contemplated that the government would limit its intervention in airline affairs, including labor matter. . . ." Id. at 74.

Secretary Dole further stated that, because strikes against Pan Am and/or United resulting from the route transfer, would not "threaten the air transportation system," LPPs were not warranted. Id. at 75. No reasonable consideration was given to the likehood of substantial employee furloughs and seniority disputes. Contrary to DOT's conclusions, the labor parties were not given an opportunity to negotiate protections for their members impacted by the route transfer, because the carriers intentionally withheld information on their transaction plans

In *Pacific*, the DOT has adopted an insurmountable burden of proof, requiring a showing that labor strife from a single airline transaction will "threaten the air transportation system" before LPP's will be imposed. If Congress permits this standard to be law, the LPP policy is effectively eliminated.

CONCLUSION AND RECOMMENDATION

In concluding, we ask this Subcommittee to examine the significant role played by LPPs over the past 35 years in providing a fast and low cost means of resolving labor issues, while avoiding interruptions to commerce. For example, pursuant to the LPPs, the carrier and the Teamsters, following the largest merger in airline history (Pan Am/National), successfully negotiated a system for seniority integration, involving more than 8,000 employees in locations throughout the country.

Now, however, the DOT, in ignoring the success of labor protective provisions, is willing to accept labor-strife-caused interruptions to the flow of commerce, as long as such strife does not threaten the entire air transportation system.

We submit that the public interest, airline industry employees, and carriers need the stability provided by the protective provisions in airline acquisitions, mergers, and route transfers. For this reason, the Teamsters Airline Division urges Congress to mandate that the *Allegheny-Mohawk* provisions be imposed in various inter-carrier transactions. Enforcement of these provisions should be committed to the Department of Labor, as they raise essential labor issues.

Senator KASSEBAUM. Thank you very much, Mr. Genoese.

Let me say, Senator Exon, who is the ranking member of the subcommittee, has been in an Armed Services markup this morning, and he now has a very crucial part of the farm bill on the Senate floor. He has asked if he could interrupt with a few questions before he has to go back to the floor.

Senator Exon, we appreciate your coming over.

Senator EXON. Madam Chairman, thank you very much.

I apologize to you, the subcommittee and the witnesses that preceded this panel and this panel. We have had our Armed Services meeting, that I had to attend this meeting, and the important farm bill, as the Chairman has said, on the floor of the Senate, that I must go back to.

I considered the LPP matter very important because I remember all of the assurances that we received during our consideration of airline deregulation on the extent which these people were going to be treated fairly and equitably. I guess there could be some difference of opinion whether they have or have not been. I have listened with interest to you, Mr. Genoese, and Ms. Egge, I would just like to ask you a very quick question.

As far as your people are concerned, have the airlines entered into good faith bargaining with regard to the dropping of jobs and cancelling of routes and things of this nature, or do you people find yourself basically in the same position as described by Mr. Genoese in his testimony just completed?

Ms. EGGE. I think probably I would have to say we find ourselves feeling just like Mr. Genoese described.

Senator EXON. Your testimony is upcoming, Mr. Clarke, but I would like to pose the same question to you.

Mr. CLARKE. It is hard to say because in some carriers you do have good faith bargaining and in other carriers you do not, and the ones, the Machinists, the Brotherhood of Railway Clerks and the Machinists in particular, there is one carrier in particular that has not bargained in good faith.

Senator EXON. Thank you both. And thank you for allowing me to interrupt the testimony. Please proceed at this time, and I will get back as soon as I can, Madam Chairman.

Senator KASSEBAUM. Thank you, Senator Exon.

Mr. Clarke?

Mr. CLARKE. Madam Chairman, my name is John Clarke and I am a lawyer in the firm of Highsaw & Mahoney. We represent, and I am appearing here today on behalf of the Brotherhood of Railway and Airline Clerks, the Flight Engineers' International Association, and the International Association of Machinists and Aerospace workers.

These unions represent close to a majority of the contract employees in the air transport industry today. We have submitted a prepared statement which we ask be placed in the record, and rather than spend my time reading that, if I could just highlight a few points.

In the statement we pointed out that back in 1978 when Congress enacted the Airline Deregulation Act, Congress included a provision in there, section 43, which stated one of the purposes of the act, and that is Congress said that on behalf of the American people, Congress must ensure that the benefits to the public which result from its decision to alter substantially the regulation of air transportation are not paid for by a minority, the airline employees and their families who have relied upon the present system.

In an attempt to try to implement that particular thought, Congress imposed section 43 of the Airline Deregulation Act which provided for priority of hiring and also monetary type of benefits for employees. We are now 8 years past the Airline Deregulation Act, and still not one person has received any benefits under section 43.

This in a sense brings us into the question before this committee, namely, the question of labor protective provisions and what is actually the foundation for it, and what kind of an impact the present regulatory scheme has had upon that policy.

As witnesses have indicated, and as I am sure you are aware, the labor protective provisions have been imposed in the airline industry since the early 1950s. The first case, United Western, initially decided in 1950, but in 1952 the protections were imposed. But they did not start from the airline industry. Their history really originates from the railroads where in the 1930s, and then particularly in the 1940s the concept that there was a need to shield employees from the impact of mergers, acquisitions and other regulatory actions of carriers came into being, and the purpose of labor protective provisions (or employee protective provisions is really what they are) is to provide for a strong national system of transportation by providing a qualified, dedicated supply of employees.

If we try to put it into capitalistic type of terms, the labor supply—the purpose of employee protective provisions is to make sure that a supply of employees is available to the transportation system and that it is not affected, and it is not eliminated by economic actions that go on among the carriers themselves. If there is no form of protection whatsoever for employees, why should an employee who realizes that seniority is his life stay with a carrier that begins to experience economic downturns? He knows that if the carrier does go under he is out of a job, and if there is no light at the end of the tunnel in the form of the knowledge that at least the Congress and the administration will recognize his importance to the system, if he does not see that light at the end of the tunnel, he has to bail out as quickly as possible to go to a carrier that is more economically steady so that his job and his seniority can be protected, in a sense, job security.

That is what labor protective provisions are in a essence intended and designed to accomplish.

Now, we have heard testimony today of the need to prevent labor strife in the industry and not to consider general elements of employee welfare. If you go back to the first case of the Supreme Court where the Supreme Court addressed this issue, *United States* v. *Lowden*, in 1939—that is L-o-w-d-e-n—in that case the Supreme Court said, it identified the purposes for the protections and said when the demands of justice are ignored, the morale and the efficiency of the transportation system, in that case the railroads, suffers from that, and that is why the administrative agency in that case, the ICC, had the ability to impose conditions in the public interest to protect employees.

The Department of Transportation since it has taken over the administration of section 408, has followed the policy of the Civil Aeronautics Board from the late—from actually around 1982 because up until 1982, the CAB did impose protections as a condition of its regulatory approvals, even though they said that there were special circumstances in those cases—the inability of labor and management to have the time to develop a formula. So the Civil Aeronautics Board imposed protections, but since 1982, with the Braniff cases, from that point on the Civil Aeronautics Board refused to impose protections, and the Department of Transportation has continued that policy. And they say in a sense that we will not impose labor protection unless there is a clear showing of a threat to the entire airline industry of such a magnitude that it would threaten to shut down the entire system.

We submit that at that point the imposition of labor protective provisions is not going to accomplish anything. If the airline industry is in such a state of distress that all the employees of every airline are ready to go out, labor protective provisions are not going to accomplish a single thing.

Labor protective provisions, when they are looked at anaytically, are essentially a system whereby the administrative agency imposes a bridge, in a sense, to bring management and employees together where the Railway Labor Act does not impose a method to get together. Under the Railway Labor Act, the employees of United have no right to bargain with the management of Pan Am, so in the United-Pan Am case, there cannot be a working out of any kind of an arrangement before the merger actually takes place. It is sort of after the fact situation.

One of the purposes of labor protective provisions is, in a sense, to require by the 45 day advance notice requirement that the carriers get together with the employees and give them notice. Also, one of the most difficult parts of a marger is seniority integration. Without a requirement in a labor protective provision that seniority be integrated fairly, the duty of fair representation would be the sole protection for employees.

But where is there any breach of the duty of fair representation where a union says that all people who come over are considered as new hires and go to the bottom of the seniority list? There is no breach of the duty of fair representation. And why should a union that represents 5,000 people on one carrier integrate the seniority of 1,000 coming over where such an integration is going to cause tremendous disruption among their own members.

Secondly, there is the question of what happens when you affect the seniority rights like that? It is a property right. What right does the union have to try to impact the property right unless thgere is some kind of Government requirement that there be this integration of seniority list.

Now, in the United-Pan Am case, the Secretary was faced with essentially three requests for employee protection. The one was the general Allegheny-Mohawk. The second was an integration of seniority list. The third was priority in employment. All three were denied, and they were denied upon the concept that deregulation means you keep the Government out of labor relations, the Government out of airline relations in any phase at all.

Secondly, they said that as far as the priority of employment is concerned, there was nothing in the Airline Deregulation act or the Federal Aviation Act as it now exists today which in any way indicated that Congress intended the department to impose a requirement that there be priority given to people who were displaced by a particular transaction. That statement completely ignores section 43(d) of the deregulation act which specifically set up a priority in employment for people who would be affected by deregulation. But of course, those people were people who had seniority prior to 1978.

So in a sense, what we are faced with is at this time the Department, following the CAB's precedent, has taken a position that the public interest factors in section 408 transactions do not include labor impact, that the only public interest considerations involved in section 408 are the competitive and the anticompetitive considerations.

So therefore the Civil Aeronautics Board said in the Frontier Horizon case, regardless of what kind of a showing labor makes except for a complete shutdown of the industry, we will not even consider what kind of an impact on labor is involved in the particular transaction. The Department has continued that policy.

So therefore we submit that under the present set of—the way the law is presently situated right now, labor protective provisions will never be imposed by the Department of Transportation unless Congress takes some form of action.

Thank you, Madam Chairman.

[The statement follows:]

STATEMENT OF BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Madam Chairman and members of the subcommittee, my name is John O'Brien Clarke, Jr. I am a lawyer with the firm of Highsaw & Mahoney, P.C., with offices in Washington, D.C. I am appearing here today on behalf of the Brotherhood of Railway & Airline Clerks, the Flight Engineers' International Association, and the International Association of Machinists and Aerospace Workers. These unions represent a majority or close to a majority of the contract employees in the air transport industry.

As you know, until the enactment of the Airline Deregulation Act of 1978, the Civil Aeronautics Board traditionally imposed formulae of employee protection in route transfer cases, as it did in merger cases and acquisition cases. It did so because it knew that employees suffered serious adverse economic effects every time carriers transferred routes or merged or consolidated operations by the acquisition of one carrier by another. The CAB, the courts and the Congress recognized the justice of imposing a formula of protection for employees. They also recognized and acknowledged the overall benefit which such an act had upon the public interest in terms of employee morale which translates into safety and efficiency of operations.

The enactment of the Deregulation Act of 1978 changed all that. The CAB stopped imposing protective formulae in these cases concluding that that was what the Congress wanted as evidenced by its enactment of the Deregulation Act. The Department of Transportation has continued the policy of refusing to protect employees adversely affected by these carrier activities. Also, the DOT has actively and vigorously fought against any protection being made available to employees under Section 43 of the Airline Deregulation Act. Ironically, with the transfer to it of CAB functions DOT has now become the employees' judge as well as their adversary in these Section 43 cases.

Indeed, just the other day Secretary Dole approved the sale of Pan Am pacific routes to United Air Lines for $750 million and in doing so refused to protect any of the 2,700 employees admitted to be affected by that sale. She said she was merely following the reversal of governmental policy toward air transport employees evidenced by the Deregulation Act. Secretary Dole concluded that she would not have imposed conditions to protect these employees even if Pam Am and United were to be struck since both carriers had been struck earlier in the year without causing serious service problems. Therefore, one must conclude that protection will be afforded employees only if every air carrier employee in the nation, unorganized as well as organized, is willing to strike regarding a matter that doesn't directly touch the vast majority of them. One may assume protective conditions will never be imposed under that criterion; but if the day ever arrives when that criterion is met, this nation will be in such serious trouble that no formula of employee protection conditions will be able to prevent national disaster on every level.

Secretary Dole's statements of DOT policy regarding the just and equitable treatment of employees was earler put forth by a DOT witness before this Committee's House counterpart when he testified that even in merger cases DOT would consider imposing employee protective conditions only under the imminent threat of a nationwide strike on all air carriers.

Employees are economically injured with the implementation of every route transfer, every merger, and every acquisition. Until enactment of the Deregulation Act in 1978 the CAB imposed the so-called Allegheny-Mohawk conditions or its predecessor formulae in each such case. It is our position that the Congress should require their imposition in all such future cases. Every ground which supported their use in the past exists today. Indeed, with the air transport industry in near chaos with the predatory competition that exists among the carriers, such protective arrangement are more necessary today than ever before.

Employees are the innocent victims of the effects of deregulation and the unbridled drive for profit created by the deregulated environment. The employees have lost their jobs, had their wages reduced and have been transferred about their carriers' system as their employers have shifted from air line systems to air hub systems and as these carriers continually adjust their operations to meet new competition. Clearly, the carriers have profited from these economic adverse effects to their employees who should share to some extent in those profits because it is the employees who have made them available to management through their sacrifices. To protect these employees is good public policy and the Supreme Court of the United States and the Congress repeatedly have recognized it as such. Most recently Congress, and particularly this Committee, acknowledged the affirmative public policy aspects of protecting air transport employees in its report approving the bill that became the Deregulation Act.

This Congress should require the imposition of Allegheny Mohawk-type protection in every air carrier route transfer, every merger and every aquisition which occurs in the air transport industry.

The public policy problems attendant upon route transfer, merger and acquisition cases are but the tip of the iceberg of problems confronting this country as a result of the enactment of the Airline Deregulation Act of 1978.

That Act was described some 2 years ago by a Wall Street investment banker as one of the strongest anti-labor bills ever enacted. We agree. Indeed, the Airline Deregulation Act of 1978 has proved to be the most effective anti-labor legislation enacted in the twentieth century. No one can compare the air transport industry today with the industry that existed in 1978 and not conclude that the Act has had devastating effects upon the employees of that industry, particularly those who were employed in 1978.

The serious and extensive adverse effects of the Airline Deregulation Act upon employees has been documented many times before this Committee and its House counterpart. The fact that the CAB itself some 4 or 5 years ago found that at least 13 air carriers had suffered employment losses of 7½ percent or more since deregulation is an indication of one of the more immediate effects of the Act. It has resulted in the two-tier wage system being introduced in this industry; an insidious device that will have debilitating effects upon the entire industry in the years ahead. The wages and working conditions concessions in today's collective bargaining negotiations are all demanded in the name of the overwhelming competition loosed upon the employer by deregulation.

As recently pointed out in a Wall Street Journal article air-safety experts fear that "deregulation may have distracted the attention of airline executives from aircraft maintenance. There are pressures to cut labor cost, to reduce forces and to expand routes." Such pressures are quite natural to the price-oriented competitive arena in which the industry now operates rather than the service-oriented competitive environment that existed before deregulation. A clear symptom of the effect of price competition is found in the fact that when a major air carrier recently increased its passenger carrying capacity by 20% it increased its maintenance force by only 7%.

Aircraft utilization has increased enormously because of the hub system now employed in the industry forcing additional work onto the maintenance forces. As a result, minor repairs are often delayed because of the constant demand for aircraft usage.

All of this evidences itself in a lowering of employee morale which must sooner or later affect the efficiency and safety of operations.

When Congress enacted the Deregulation Act, it was fully aware that the people employed on the airlines in 1978 would be hurt precisely because the statutory and regulatory standards which had protected the industry—both Management and Labor—and the public were about to be removed by the Act. The Congress, and particularly this Committee, in what must be historically one of its most ironic statements, concluded that "on behalf of the American people, Congress must insure that the benefits to the public which result from its decision to alter substantially the regulation of air transportation are not paid for by a minority—the airline employees and their families who have relied on the present system." The Congress recognized that it had a "duty to the industry and its employees which would not exist if such action had not been taken." As we all know, that duty was carried out by the enactment of Section 43 which has proved to be a cruel hoax upon the employees and their families. After more than seven years, no employee has received protection under its provisions. No employee ever will receive protection under its provisions. Every person who has had even a passing acquaintance with the unions' efforts to secure for those they represent the protections which Congress repeatedly stated it intended them to have known that this is not an exaggeration. It is a melancholy fact.

The unions have sought amendments to Section 43 which at least would give the employees a fighting chance to obtain the protections which Congress promised them, which this Committee promised them, but there has been, to date at least, little evidence of Congressional interest in enacting such amendments.

The deregulated environment brought about by the enactment of the Deregulation Act has hurt employees and the public interest in a number of other ways. For example, an air carrier can go into bankruptcy; disavow its labor contracts; hire cheap labor in a market which has already been glutted by lay-offs in the industry; promulgate cut-rate fares and thereby generate profits which can then be used to pursue control of other carriers in order to repeat that process. This activity could only happen in a deregulated environment. The situation involving Texas Air and Continental and TWA is well known. A TWA-Continental merger was recently thwarted when Carl Icahn secured a 50+% share of the ownership of TWA. Mr. Lorenzo then shifted his attention to Frontier and was again rebuffed; this time by People Express. But each time the rebuffed company realized a very substantial profit.

In our view and in the view of many others, such activity is an abject abuse of the laws of this country and should be prohibited. Certainly such activity which has an obviously destabilizing effect upon the industry and particularly the employees of the target air carrier cannot be viewed as consistent with the public interest.

Because the Congress is not ready to declare deregulation a failure and enact an appropriate overall regulatory statute for the industry, we must have specific legislation to take care of each of the specific problems occasioned by deregulation. In this case, we must enact a law such as that proposed by H.R. 2870 introduced in the House by Congressman Doug Bosco of California which would prohibit an airline holding company with a subsidiary in bankruptcy from acquiring another carrier. We also strongly recommend that the Congress modify the bankruptcy laws so as to require air carrier reorganizations to be handled in the same manner as railroad reorganizations are conducted, including a limitation on the right of air carriers to abruptly suspend operations with no notice to the travelling public or their employees.

We ask the Congress to return to the employees the protections which it stripped from them—we believe inadvertently—in merger and similar cases when it enacted the Deregulation Act. We urge that an amendment to the Act be enacted which would require the imposition of a formula of protection such as Allegheny-Mohawk in all merger, acquisition and route transfer cases, as well as an amendment which would provide the employees of this industry a reasonable opportunity to receive the protections this Committee said they were entitled to and would receive under Section 43.

Thank you.

Senator KASSEBAUM. Thank you, Mr. Clarke.

First, I would like to ask all of you, I assume all three of you would support a mandatory labor protection provision, is that correct?

Mr. GENOESE. That is correct.

Mr. CLARKE. That is correct.

Ms. EGGE. That is correct.

Senator KASSEBAUM. One of the things that troubles me greatly about mandatory provisions is—and it is really illustrated by the examples you gave, Ms. Egge—other situations in other industries where this very same kind of thing occurs. I am thinking of the Texaco-Getty merger, which has threatened to close and has closed some refineries where people have lost jobs and have had to move. You can make the argument that oil is an industry that has some national security concerns, and I think that when you go from industry to industry and see situations where job security is not guaranteed, one sees that difficult decisions that have to be made. Why do we have a responsibility here to guarantee this kind of protection for the airline industry?

Mr. GENOESE. When you said before that a big oil company merging and various other things and so forth, they run independently, a lot of these companies, New Jersey might run different than Baton Rouge, but an airline, they run as a system. And they have a system type of seniority, and they run in a system type of way. When they turn around with an airline, they put it in as a whole particular system of either getting in or out of it at a certain time in different markets in that particular area. Indeed, even the Government, when it comes to an election on the representation of the people, it is done on a systemwide basis. There is no carving out of units whatsoever.

So the point that Mr. Clarke brouight out, which is a very, very important one, when he turned around and said that you have got two people on both sides here and the big one is going to eat up the little one unless there is some protection for them, or they turn around and say they could be equal and they will be fighting one another, and there would be unrest completely. In that particular way, somebody has to step in and say you have got to set up something here, some rule on a seniority particular way. Is the airlines different? The answer is yes.

Senator KASSEBAUM. Well, but I do not know that I feel that it is a system that is whole, as such. I think Mr. Clarke just said that United and Pan Am operate with a very different type of employee structure. One has a large number of—and different unions, each of which would have to be negotiated independently of the other ones.

Mr. GENOESE. The point that I am trying to make is that it is a system, the company itself, different than the oil companies. That was the question that you brought out about the oil companies, why are they different than oil companies. They are different than oil companies because they have got one great big company and they are going into a system, not in one locality and stay in one locality and close in one place and open in one place. It is entirely different.

Senator KASSEBAUM. Well, they do not have the same type of union structure.

Mr. GENOESE. Well, the Government set that up.

Mr. CLARKE. Senator, there is also another difference between the two, and that is the fact that the airline industry dealing with transportation, especially transportation of people, is one where it is extremely important that there be experienced employees, and this goes back to the concept again of labor protection, to provide for the supply of employees. You have to have a force of employees who are dedicated to their work, who are not treating this as simply a 9 to 5 job, but as a job that is extremely important because they realize the importance that this role plays in the entire economic structure and the transportation of the country, and once the employees get the feeling that they are nothing more than chattel, chattel that can be moved around or completely forgotten, then that morale suffers. And once the morale suffers, the industry as a whole suffers.

Ms. EGGE. I would also like to add that it is simply not necessary nor are we asking for all the labor protective provisions under the Mohawk-Allegheny, but the important one is the binding arbitration and a mechanism for a fair and equitable seniority integration, and that just is not there under present labor laws, and under the Railway Labor Act, and it primarily provides incentive for parties that is not there now.

There is no reason, for example, for the flight attendants union that represents United flight attendants to talk to the flight attendants union that represent Pan Am flight attendants. There is no incentive at all to do that.

Senator KASSEBAUM. This is not being done?

Ms. EGGE. Not really. I think Mr. Clarke clearly pointed out in his statement that the primary interest and the duty of fair representation is to represent the present dues paying members, and that is what the flight attendants union at United is doing. They are not concerned with those who are coming in, and in their view, the new ones coming in, the new people coming over, regardless of the fact they have been working for another airline, they are coming in as part of an acquisition, not a merger.

Senator KASSEBAUM. Well, it would seem to me that—and this is what I was pointing to earlier when you said that there are differences in the system—we have got two different types of union representation because of the different people that they represent. It might be that if this situation was reversed, the unions would have to take a different position. Again, I do not know that Government imposition of mandatory requirements addresses this particular queston.

Ms. EGGE. But is it not the role of Government to provide the mechanisms for these things to take place?

Senator KASSEBAUM. On seniority integration?

Ms. EGGE. Well, but to provide, for example, for binding arbitration so that there is an incentive for there to be real and good faith bargaining.

Senator KASSEBAUM. Well, let's take Pan Am for just a minute, because you mentioned some examples dealing with Pan Am. Pan Am was running at an enormous loss. One can analyze from various standpoints, why those losses occurred, but is it not the responsibility of successful management to try and make the strongest company possible, which may require some difficult personnel decisions, and even the elimination of the job of purser. It is hard for the person whose job is eliminated, but it may be absolutely essential in a merger to realize that that position just does not have merit today, when a more streamlined organization may be necesary to survive.

Ms. EGGE. Well, I do not think we were questioning the success or the reasoning for the merger. I think we are just saying what we are asking for is a mechanism to provide for an ease on all parts equally, and equitably.

Senator KASSEBAUM. Not necessarily lock everything in place?

Ms. EGGE. That is right, but a mechanism, an incentive. I mean, human nature is human nature, and people are motivated by incentives.

Mr. CLARKE. Madam Chairman, just one point on that. One of the things that is forgotten about labor protection is the monetary amounts there look as if they are some part of a gift to employees, but they are not really intended that way. The purpose of having the monetary protections—displacement and dismissal allowances—is to make management think twice before they decide to gain benefits from the merger or by the combination through eliminating employees.

One of the easiest ways to save money in the airline industry today, of course, is to affect the labor side by laying off employees, and when you have mergers, you normally have a duplication of effort in some locations. The purpose of employee protetion is to have the carriers think twice before they decide to take that step, let them achieve their savings through other methods rather than through eliminating employees.

That is one of the reasons, going back again to *Lowden* and to the 1942 case in the Supreme Court, where the Court indicated that the benefits to the public and to the shareholders should not be gained at the expense of the employees. For every employee lost, that means there is a benefit, according to some, to the public. But the public determination is that the public should not benefit by the suffering of an individual, and that is one of the reasons for the monetary protections. It is an incentive to require management to achieve their gains through more lasting methods rather than through immediate impact on employees.

Mr. GENOESE. Let me bring one point out which is very, very important, which is being overlooked. They are moving 1,200 people over to United, and that is great. They work it out. But what happens to the people who are left? And they turn around and say, hey, we do not need these type of people anymore because we have got a smaller company, and we are going to knock these people off one way or the other. And if you do not come to terms over here, we are going to sell off the north Atlantic.

As I said before, we have 3,000 people on layoff at Pan American World Airways. Those 3,000 people did receive some subsidy from the Government, either unemployment or various other things, and it cost the Government a lot of money because what happened there is the company made a deal for themselves and the stockholders, whatever it may be. They did not take the people into consideration. And when you say, you know, that companies make decisions, right or wrong, when they are wrong, they say, well, it was a judgment call on a particular situation.

I said at the beginning, you know, being a professional union man all my life, that we understand Wall Street, we understand business. We do not want to handicap a company. We will help companies with cutbacks and various other things in order to make them go in the right direction. But the important thing is this, that we have seen workers transferred all around, all over the place, lose their particular job and say gee, I wish I could get a buyout so I could leave. I am tired of it. I have a vested interest in this company. I cannot leave unless something is taken care of, and they turn around, and the next thing you know, they forget about me who continues to help this particular country. And they say, well, that is gone yesterday.

Mr. Clarke brought out, you know, the morale. Nobody cares about morale. If it costs money, throw morale out. If it costs money in safety, throw safety out. But you know, you do have human beings here, and they do not just disappear from this earth. And some of them have to cost this Government during that adjustment period.

And my understanding of labor protective provisions, they are putting a new ballgame together and they are giving you a little breathing space to make those new decisions in the new world of the new company or the new careers and various other places that you go. It is as simple as that. It has got to cost the Government somewhere.

Senator KASSEBAUM. But are there not a lot more people at work today in the aviation industry as a whole than there were in 1980?

Mr. GENOESE. I would say I disagreed before when they said that there were more people working. They might have more people working in the commuter end of the business in that particular area, but I say no.

Senator KASSEBAUM. Well, I am speaking industrywide. I do not have the figures myself. But I am guessing that there are more people employed today in the airline industry as a whole than there were in 1980.

Mr. GENOESE. I would say it is level. I think it went down and came up a little bit. But I would say there were a lot of jobs that were just eliminated completely.

Senator KASSEBAUM. It is true that with deregulation, certainly, the nonunion factor has come into significant play. How do you feel that labor protection provisions would help you deal with nonunion the alter ego carriers, like those that Captain Duffy was speaking of?

Mr. GENOESE. My remarks at the beginning, when I said that we are here talking about the organized and the unorganized, we are not just talking about union versus nonunion. You have got 60,000 people in the airline business; for instance, TWA, about 5,000 to 8,000 unorganized, 10,000 to 14,000 on Eastern Airlines unorganized, Delta unorganized. You are talking about United, that is one of the reasons they did not want to take the Teamsters ground people over because they were afraid we would infiltrate them and we would damage their minds in some shape or way to form an organization. They did not want to have any part of us. That is one of the main reasons on the situation.

But we have not given up on them. We are going to organize them some way. But the point we are making is that we are here to protect the workers' jobs, organized or unorganized. It does not make any difference to us. The big are going to take care of the people and the strong are going to take care of the weak, and that is what we are dedicated to, to that extent, and we made that commitment.

Mr. CLARKE. Senator, the labor protective provisions would apply to both organized and unorganized as well. Now, the organized employees have, in one sense, the benefit of the ability to negotiate. It is not an effective remedy to the situation, but it is certainly in the long run, it gives a lot better chance.

Senator KASSEBAUM. I realize they apply to both. I simply do not know, however, whether, if we had mandatory labor protection provisions, if they would help deal with, say, a merger or an acquisition in which we had a unionized airline integrating with a nonunion carrier.

Mr. CLARKE. It would help in both ways. It would help where both airlines are—where the employees are unorganized.

Senator KASSEBAUM. A nonunion airline might be very reluctant to again look to mergers or acquisitions; I am sure all three of you believe that that would not be the answer. Neither did Captain Duffy. But there are those who say that faced with, say, mandatory labor protection provisions—that would have to be enacted, by the way—or the inability to make some decisions regarding labor, that they simply would not proceed ahead with the merger or acquisition.

Mr. CLARKE. Senator, we believe that that attitude exists solely because the airlines know that they can have mergers or acquisitions without the imposition of labor protective provisions. Once it is known that those provisions will be imposed and you cannot get around it by subterfuges, then they will start to address the issue realistically.

And we will no longer see those clauses in contracts which say that if labor protection is imposed the deal is off. Which came first, in a sense, their refusal to go into a merger because—or the statement that they are not going to go into it because of LPPs, or was that statement one of the reasons to try to get away from LPPs?

Mr. GENOESE. May I just bring one last remark out?

I am the chief spokesman for the Teamsters on the Pan American World Airways property. With the attitude the way it is today, including the sale in the Pacific which they never addressed it with our people, and we are beginning mediation sometime today with the Government and the company, we are on a collision course that thre will be a strike at Pan American World Airways, just an attitude, an approach, handling it, whatever it may be, and there is nothing there to take care of our ground people out in California or Hawaii or anything else. They just do not want to talk about it. They do not want to talk about it whatsoever because when they put the agreement with United, who cares about them? Forget them. Brush them aside. They mean nothing.

And that is the point that we are trying to bring out to a lot of people, and it can happen to organized, unorganized, any shape or form, whatever it may be, they are just out.

And now you say, well, they can move east or they can turn around, but if they move east, it has got to affect somebody because they are going to have only so many people on the payroll at that time. They made testimony in front of the DOT saying that nobody would be laid off. Well, we just got hit with a bunch of layoffs. You say, well, negotiate with them. Well, you negotiate, and they turn around and they say we are going back 30 years, and so we have got to make our approach back 30 years in handling it, and they say accept this. Well, you are in trouble. And that is the attitude they have.

So when this hearing took place we wanted to come down and make sure we were represented. As I said at the beginning, we have made the complete circle. I am back where I started from. Nothing has been solved.

Senator KASSEBAUM. Well, I do not know that I agree that nothing has been solved. I think that there will always be problems and uncertainties in the labor market. I do not think you can ever guarantee job security throughout the labor arena. One might wish that we could, but I think even you would agree, Mr. Genoese, that that would be unrealistic. And as we try our best to deal with the changes that have occurred—and some enormous changes have occurred with the deregulation of the airline industry—I think we have to be able to use, as Captan Duffy said, the invention that comes from necessity.

If I may just follow up with a question to Mr. Clarke regarding the Continental case and Mr. Lorenzo, could not the courts better redress the particular situation that existed there? And let me ask you, too, if in negotiations for labor contracts there could not be provisions that would prevent the kind of occurrences that resulted from the Continental Chapter 11 case?

Mr. CLARKE. Senator, we did take the whole question about the validity of the reorganization immediately into court. The chapter 11 occurred on September 24, and at the first hearing it was brought up and the union stated that they were going to file a motion to dismiss. The motion to dismiss was filed. We had over 15 days of hearings on it, and finally we had a decision in January, but that decision was then put into the appellate process, and it was just 2 or 3 days ago, or excuse me, about a month ago, that we finally had the record docketed in the district court. It took the bankruptcy court clerk's office almost a year to put the record together and docket it up, and in the meantime, the reorganization went ahead, on a steamroller basis.

The problem that we have is the courts are good for immediate injunctive type of actions when the situation lends itself to an injunctive action, but where you are dealing with a long term process, a regular suit that gets out of the injunctive process, any remedy in court is illusory because the harm has occurred, and it is all over, and any time you are dealing with a question of whether the reorganization was in good faith or bad faith, you are into a situation that requires a long, full blown hearing to get into that.

So in response to your question, we would say that the courts are an after-the-fact type of Bandaid remedy that in many cases is no good, especially if you lose your arm in the meantime.

Senator KASSEBAUM. Well, could you not, in negotiating new contracts, include language that would enable the court in future actions to more clearly define any breach of contract?

Mr. CLARKE. The problem that you have with negotiating contracts is when you deal with a chapter 11 is that like in Continental, that was the first thing to go, even before the court decided. The day that Continental shut down operations, later on that day they filed their petition, but before they even filed their petition, they abrogated all their contracts and sent that letter out, sent out letters to the unions saying that the contracts were out and here are our new work rules which we want you to consider as a section 6 notice. And so even if you had, and the pilots did have a very strong contractual provision which they called the New York Air clause in their contract, and especially with the TAC, it still did not prevent Continental from, one, abrogating the contract, and two, from going ahead and starting to set up Continental West later on.

So collective bargaining can go just so far. What is really needed is an overall legislative solution to the issue on the case that puts sort of like the, not goals but parameters that the parties have to work in, and that it is clear if someone goes outside those parameters that then you can go to court and have the court stop it.

Senator KASSEBAUM. Well, I certainly thank all of you very much for your testimony.

I would just like to end by saying again, I do not think, Mr. Genoese, that we have just come around full circle. I think we have made some small steps, and I see some new avenues opening up like those we talked about earlier in the TWA takeover situation.

Mr. GENOESE. Except the unorganized.

Senator KASSEBAUM. Except the unorganized.

Well, they were, I am sure, cheering on the organized. So,I think we are dealing with the changes that occur, but it is going to take a good faith effort, as you say, on all sides. I appreciate your vigilance and your determination, and I am grateful for your testimony this morning.

[Whereupon, at 11:40 p.m., the subcommittee recessed subject to the call of the Chair.

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF LINDA PUCHALA, ASSOCIATION OF FLIGHT ATTENDANTS

The Association of Flight Attendants ("AFA") represents more flight attendants in the United States than any other Union. We have appeared before Congress on numerous occasions regarding airline mergers, acquisitions and other arrangements between air carriers, and the impact of such transactions upon airline employees. We greatly appreciate the opportunity to submit this statement concerning the impact of airline mergers and other arrangements on employees, and the need for codified employee protections in those situations.

Standard labor protective provisions (LPP's) should be required by the DOT as a condition of approval of airline reorganizations such as mergers and acquisitions. Codification of LPP's: Would serve the public interest; would be consistent with deregulation; would be consistent with the objective of the statutory framework governing airline labor relations; would not require any increased government activity; and would provide the best mechanism for adequately protecting the legitimate needs of employees affected by mergers, acquisitions, and similar arrangements among air carriers.

Each of these concerns will be addressed in turn.

Requiring standard LPP's as a condition of approval would serve the public interest.

Under the Federal Aviation Act and the Deregulation Act, certain airline reorganizations cannot be approved by the DOT if they are not in the public interest. Presumably, a determination that a particular arrangement is in the public interest carries with it the notion that the public is better served by combining certain operations of the carriers involved rather than having them operate separately. However, a combination of operations presents a number of problems, some involving the affected employees.

An airline merger or acquisition disrupts employees' lives and may threaten their livelihoods. Employees may be displaced to a new domicile, forcing them to move households and families to new locations or to become long-distance commuters who fly between their home cities and their flying jobs. They may lose their jobs entirely if the combined operation requires fewer workers, or if the employees do not transfer as part of the management deal.

To soften these disruptive effects upon employees, in carrying out its public interest responsibilities under Section 408, the CAB generally imposed LPPs as a condition of approval of consolidations involving Section 401-certificated carriers. These LPPs typically provided an orderly procedure for integration of operations, certain minimal economic benefits in the event employees lost their jobs or who were otherwise displaced due to the merger, and binding arbitration to resolve any disputes regarding these provisions. Those imposed since the 1972 Allegheny-Mohawk merger have provided the standard for subsequent LPPs. Since 1950, the CAB imposed LPPs as a condition of approval in approximately 43 Section 408 cases.

Clearly from the employees' point of view, LPP's serve the public interest by minimizing the labor disruption inherent in any merger or combination of carriers.

Yet the public interest benefits of LPPs enure not only to airline employees, but also the air carriers themselves who are parties to airline mergers. Airline managements have often recognized the critical importance of LPPs and welcomed their imposition. Thus, for example, Dominic Renda, President of Western at the time of the proposed *Continental-Western* mergers, strongly endorsed the imposition of LPPs:

QUESTION. In your opinion, and in your experience in the management of airlines, are labor protective provisions beneficial only for labor, or are they beneficial also for management?

Mr. RENDA. In my judgment, a reasonable labor protective provision is essential to both sides, in terms of the employees. It gives them the protection which I believe they are entitled to. In the case of a company, it provides them with the opportunity to rely on the dedication, the loyalty, and the moral support of the employees which you must have in order to get the productivity that is essential.[1]

Similarly emphatic were the comments of the chief industrial relations official for Republic Airlines, the acquiring carrier in the *Republic-Hughes Airwest* acquisition case: "It is my view that labor protective provisions are fair to Republic and to the employees of both companies. Indeed, they are more than fair. They are absolutely necessary if there is to be a successful integration of employees in an industry such as this. Absent the labor protective provisions, I have serious doubts whether many past consolidations in the industry would have been possible."[2]

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[1] *Continential-Western* merger case, Docket 33465, Transcript, p. 179.

[2] Testimony of Gowan J. Miller, Vice President-Industrial Relations, Republic Airlines, Inc., Exhibit RC-401, pp. 5, 6, 7.

Imposition of LPPs is consistent with deregulation. The 1978 Deregulation Act clarified congressional intent to maintain and expand airline employee protections by amending the public interest standard of the Federal Aviation Act to specifically include "the need to encourage fair wages and equitable working conditions" (Sec. 102(a)(3)).

Most recently since deregulation, standard LPP's were imposed in the *Continental-Texas International* acquisition (1981), the *Continential-Western* case (1981), the *Air Florida-Western* case (1982), and the 1982 *Bergt-AIA-Wien-Western* acquisition case.

Congressional intent to protect airline employees under deregulation is reflected in Section 43 of the Act. This requires that for ten years following the passage of the Act, certain airline employees with a minimum level of seniority, if furloughed, would receive hiring preference from other carriers, and monetary benefits if the CAB/DOT determined that deregulation was a major cause of their displacement.

Unfortunately, this congressional mandate to protect the interests of airline employees has been impeded—through delay in final issuance of regulations to implement the first right of hire, delay in determining whether employment contractions on nine airlines are attributable to deregulation, through failure to fund the mandated displacement allowance, and through pending litigation by the airlines challenging the employee protection program.

Despite this dismal record of implementing Section 43 programs, Congress clearly intended that labor protections were not only consistent with deregulation, but should be an intergral part of the industry's new deregulated environment. Because these Section 43 programs have been impeded, LPPs become an even more critical element in promoting both the public interest and equity for airline employees in the deregulated environment.

The imposition of LPPs is fully consistent with the objectives of the collective bargaining scheme which Congress has determined is appropriate for the airline industry. The central theme of federal labor policy in the airline industry is the avoidance of interruptions to the flow of traffic. Because of the great public interest is a transportation system free from labor disruption, Congress enacted a statute—the Railway Labor Act—to provide a format for collective bargaining in the airline industry which markedly differs from the scheme applied to almost all other industries, and which is designed to purposefully prolong negotiations in an effort to substantially minimize the use by labor or management of self-help, including resort to strikes, lockouts, and unilateral implementation of changes in terms and conditions of employment.

The Railway Labor Act requires that labor and management first attempt to resolve their differences through direct negotiations. If their efforts are unsuccessful, the services of the National Mediation Board ("NMB") are invoked. Mediation under NMB auspices continues until the NMB determines (unilaterally) that its efforts have failed. Then, the NMB proffers arbitration. Throughout the entire negotiations and mediation process, sometimes lasting several years, and until 30 days after either or both parties have rejected the arbitration proffer and been "released" by the NMB, either party may engage in self-help, and existing terms and conditions of employment continue in full force and effect.

Labor protective provisions have consistently been imposed precisely to eliminate or minimize labor strife and disruption and to assure an orderly handling of potentially troublesome labor-management concerns. Thus, LPPs complement and further the basic objectives Congress has set for the conduct of labor-managment relations in the airline industry.

Contrary to the fears of certain LPP critics, the statutory imposition of LPPs will not result in increased federal government activity. Any fear that codification of LPPs will result in increased government activity is entirely unfounded.

First, the significant involvement of the federal government in airline (and railroad) labor-managerment relations is already built into the statutory bargaining framework. As previously explained, under the Railway Labor Act, the NMB is authorized to intervene in the negotiations process to assist labor and management in their efforts to reach a collective bargaining agreement. The NMB plays a critical role in determining the length and course of negotiations, as mediation may not be terminated until the NMB unilaterally determines that its mediatory efforts have failed. When that point is reached, the NMB proffers arbitration. If one or both parties reject the proffer, the parties enter a 30 day cooling-off period, during which time the NMB typically resumes its mediation efforts. Only if the parties have not concluded an agreement by the end of the 30 day period may they engage in self-help. In addition to its direct statutory role in the collective bargaining process, the

NMB, under the Railway Labor Act, is repeatedly called upon to furnish panels of arbitrators to assist parties in resolving their contractual disputes.

The imposition of LPPs will not increase this governmental activity. The only conceivable government involvement would occur under Section 13 of the standard LPPs, which provides a vehicle for ultimately resolving any disputes with regard to the LPPs, including as to their applicability to a particular controversy. Section 13 provides that if the parties cannot agree upon their own dispute-resolution procedure, the NMB will furnish a list of seven (7) arbitrators from which the parties will select one to decide the dispute. As previously indicated, this is a role the NMB already plays on an ongoing basis in fulfilling its obligations under the RLA. No additional federal governmental involvement is contempiated or required.

In addition, in light of the Committee's particular focus on transactions between carriers involving international air transportation, it is important to recognize that the federal government remains as centrally involved in the activities of carriers operating internationally as it was prior to deregulation, as it continues to regulate international routes and operations. In addition, the authority to fly into and out of foreign countries is fully subject to the particular policies of the governments involved. Thus, any claim that imposition of LPPs is somehow inconsistent with the objectives of deregulation is simply inapplicable to the continuing regulated international air transportation system.

Moreover, the severe restrictions imposed upon international carrier operations underline the need for LPPs where international operations are involved. Carriers operating internationally do not enjoy the opportunity afforded carriers in their domestic operations of stepping in promptly to fill gaps in service resulting from a strike or labor unrest at another carrier. As a result, the consequences to the travelling public and to the air transportation system of labor strife at carriers flying internationally are likely to be far greater than those which would result from similar disruptions limited to domestic operations. The public interest is decidedly served by eliminating the prospect of such labor disruption. Ample experience has demonstrated the value of LPPs, in performing precisely this function.

The legitimate needs of employees affected by mergers, acquisitions and similar arrangements among air carriers can only be adequately protected by conditioning approval of such transactions on imposition of standard LPPs. Unless the government conditions it aproval of mergers or other arrangements betrween air carriers on carriers acceptance of the basic LPPs, the status and future of the jobs and well-being of employees affected by such transactions will be determined either by unilateral management directive or collective bargaining. Neither alternative adequately assures that vital employee and public interests will be protected.

The number one concern of each carrier to such transactions will be to satisfy the interests of its shareholders; employees' needs are of very secondary importance. Clearly, carriers, acting on their own, cannot be expected to adequately protect employees against the potential adverse impact of mergers or related transactions.

Collective bargaining, of course, is not even a conceivable alternative where the affected employees are not represented by labor organizations. However, even the presence of an established collective bargaining relationship will not eliminate the need for statutory LPPs, as recent experience has demonstrated. Carriers have, with virtual uniformity, been entirely unwilling to include in their collective bargaining agreements basic protections of the type embodied in LPPs should they enter into future mergers, acquisitions, or similar transactions. In the rare instances where minimal commitments have been made, they have only been in the context of extraordinary, concessionary negotiations which have so weekened the basic terms and conditions of employment of the affected employees as to make any provisions for LPP-type protections almost meaningless. Even if contractual LPPs could be obtained, their value would be highly questionable unless both carriers involved in a potential merger or similar transaction had made similar commitments, and to the same labor organizations. Otherwise there would be no assurance that the commitments on one carrier would be binding on the other.

In addition to these basic impediments to collectively-bargained solutions to the issues at stake, the negotiation process itself inherently conflicts with the central objectives of mergers or similar arrangements among carriers. To the extent such transactions further the public interest, the public benefits from their expeditious implementation. However, this can only be accomplished if there is a prompt and orderly integration of operations. But, as previously described, the statutory framework for collective bargaining in the airline industry has an entirely different and directly contrary objective—to purposefully protract negotiations in the hope of discouraging, or at least substantially delaying, resort to self-help by management or labor.

CONCLUSION

The best way to assure that the legitimate rights and interests of employees affected are protected from the harm occasioned by the unilateral decisions of their employers to restructure their working environment through mergers, acquisitions or the like, is to require that consistent minimal standards, as set forth in the traditional LPPs, be imposed as a condition of approval of such transactions.

We commend this Committee for its continuing attention to the impact upon employees of mergers, acquisitions, and similar rearrangements among air carriers, and urge that Congress provide that any approval of such transactions be conditioned on the imposition of standard labor protection provisions.

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